

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HODELL-NATCO INDUSTRIES, INC.,

08CV2755

Plaintiff,

vs.

June 19, 2015

8:30 a.m.

SAP AMERICA, INC., ET AL.,

Volume 5

Defendants.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE DONALD C. NUGENT
UNITED STATES DISTRICT JUDGE
AND A JURY

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1 FRIDAY, JUNE 19, 2015, 8:27 A.M.

2 THE COURT: Good morning, ladies and
3 gentlemen.

4 THE JURORS: Good morning.

08:32:22 5 THE COURT: Well, I guess we'll try the
6 rest of Udi's. Udi's?

7 MS. LUARDE: Yes.

8 THE COURT: You're lucky we haven't had any
9 sunshine outside so you don't have any reason to be upset
08:32:37 10 that you're inside here.

11 Wait until next week.

12 VIDEO EXAMINATION OF UDI ZIV (RESUMED)

13 A. Okay. I'm good.

14 Q. Sir, Exhibit 69 is a series of e-mails around April
08:33:17 15 12th, 2007.

16 Is this one of the documents you reviewed
17 in preparation for your deposition?

18 A. Not a hundred percent sure, but I think I did.

19 Q. Okay. Having reviewed Exhibit 69, does that
08:33:31 20 refresh your memory at all about receiving an e-mail from
21 Dan Lowery on April -- in April, 2007, asking for help
22 with respect to the implementation of Business One at
23 Hodell?

24 A. No. It doesn't. I mean, I remember reading this
08:33:48 25 two weeks ago, but it didn't -- it didn't ring a bell

1 when I read it.

2 Q. Okay. So your testimony, you have no recollection
3 whatsoever of addressing the problems with the
4 installation of Business One at Hodell in April of 2007?

08:34:07 5 A. Correct. Other than what I've read in these
6 e-mails a couple weeks ago.

7 Q. Well, looking -- starting from the back obviously,
8 the initial e-mail is an e-mail from Dan Lowery to
9 yourself, April 12th -- April 11th, 2007 at 4:34 p.m.

08:34:31 10 Do you see that?

11 A. Yes, I do.

12 Q. And he's asking for your help answering some
13 questions with respect to the installation of Business
14 One at Hodell, correct?

08:34:45 15 A. It seems that way, yes.

16 Q. Okay. And then do you know who Dan Lowery is?

17 A. No, I don't. I do now, but from reading this, but
18 I don't other than that.

19 Q. Okay. There's a reply to that e-mail from Dan
08:35:07 20 Kraus.

21 Do you see that?

22 A. Yes, I do.

23 Q. Do you know who Dan Kraus is?

24 A. Yes. I know who Dan Kraus is. I don't remember
08:35:17 25 exactly what was his role, but he was an employee of, I

1 think, SAP America at the time.

2 Q. How about the other individuals on that e-mail,
3 Paul Killingsworth and Michael Sotnick?

4 A. I don't recall who Paul was.

08:35:33 5 Michael Sotnick, I remember. Again, he was
6 part, I think, of SAP America as far as I recall.

7 Q. Did any of those individuals report to you?

8 A. No. Well, I don't recall who Paul was so Paul may
9 have, but I don't think so, and the others definitely

08:35:52 10 didn't.

11 Q. Did you have any authority over those two
12 individuals?

13 A. No.

14 Q. The e-mail in the middle of that page is an e-mail
08:36:07 15 from yourself to Dan Kraus and some other people replying
16 to Mr. Kraus' e-mail?

17 A. Correct. Yes.

18 Q. All right. Are all the individuals on your e-mail
19 and Mr. Kraus' e-mail SAP employees?

08:36:36 20 A. Again, other than Paul Killingsworth, which I don't
21 recall who he was, the other were SAP employees, yes.

22 Q. What was Dirk Boessmann's position with SAP?

23 A. Dirk was reporting to me. If I recall correctly at
24 the time, he was responsible for what we call IBD
08:36:55 25 development. IBD. IBD, Install Base Development.

1 Basically responsible for the products that
2 were already released versus other people that were
3 responsible for the new products that were -- the new
4 versions of the products that were in development.

08:37:17 5 Q. Okay. How about Niels Stenfeldt?

6 A. Niels. Niels Stenfeldt was part of the SAP channel
7 organization working with partners. I don't exactly
8 recall what his role was.

9 Q. Neither of those two individuals were included on
08:37:39 10 Mr. Kraus's e-mail.

11 Do you recall why you included them on your
12 e-mail?

13 A. No, I don't recall sending it so I don't know what
14 I had in mind at the time.

08:37:51 15 Dirk Boessmann was responsible for any
16 customer issue that went back to the product team, so
17 that's natural.

18 Niels, I don't recall.

19 Q. You made the statement, "I honestly do not know
08:38:14 20 what to tell you. Someone has sold to the wrong customer
21 which is way above any sane B1 Sweet Spot. 120 users
22 three exclamation points."

23 Do you see that?

24 A. Yes, I do.

08:38:28 25 Q. Isn't it true that the sale of SAP Business One to

1 a company with 120 users is in fact way above any sane
2 Sweet Spot for the product?

3 A. That's what it says here. I don't know if it's
4 true or not, but that's what I wrote.

08:38:44 5 Q. You wouldn't have written it if it wasn't true,
6 would you have?

7 A. You know, there's always context to -- to anything
8 you write so I don't -- it's hard to say what was April
9 12th, 2007 context.

08:39:01 10 So I don't know.

11 Q. Are you saying that that information, are you
12 saying that your e-mail could have been supplying false
13 information?

14 A MALE SPEAKER: He wasn't finished with
08:39:12 15 his answer. He was still speaking.

16 A. Yeah. That's --

17 Q. Sorry, there's a little bit of a lag here. I
18 didn't understand that.

19 A. So, no, definitely not false information, but as I
08:39:24 20 said, there's always context to what you write and I
21 don't know what the context was.

22 That's all I can say.

23 Q. Do you have any knowledge of any information which
24 would allow you to say that Business One, that the Sweet
08:39:45 25 Spot for Business One, the sane Sweet Spot for Business

1 One was not 120 users?

2 A. Repeat the question, please.

3 Q. Perhaps -- yeah, I think I worded that pretty
4 poorly so let me back up.

08:39:56 5 Do you have any -- do you have knowledge of
6 any information which would leave you -- lead you to
7 believe that that statement is not true, that statement
8 being, "Way above any sane B1 Sweet Spot"?

9 A. No, I don't, but again as I said, it depends on a
08:40:14 10 lot of context to which, you know, just by
11 reading -- skimming through the document here, there's a
12 lot of other context around this specific customer, but,
13 you know, I don't have any reason to think this was not
14 true.

08:40:30 15 Q. Do you know how long in between receiving this
16 e-mail from Mr. Kraus and replying it took you to come to
17 that conclusion?

18 A. No. I don't know. I can't even, looking at the
19 time stamps, I can't even do this because e-mail systems
08:40:52 20 convert time stamps to different time zones so I don't
21 know. I don't know.

22 Q. Do you know what information you've used to reach
23 that conclusion?

24 A. No. I don't recall.

08:41:13 25 Q. Do you recall whether your conclusion that this is

1 the wrong customer ever changed?

2 A. Repeat the question, please.

3 Q. Do you recall your conclusion in this first
4 sentence of your e-mail ever changing?

08:41:35 5 A. No, I don't recall either way whether it changed or
6 not changed.

7 Q. You make the statement, "I should probably direct
8 them to move away from this issue and concentrate on the
9 volume of regular customers."

08:41:58 10 Do you see that in the last sentence of
11 that paragraph?

12 A. I do.

13 Q. What do you mean by that?

14 A. Again I don't remember exactly what I meant over
08:41:59 15 five years ago, but I can -- just reading it now, I can
16 try to explain the -- at least what I understand now.

17 The Business One was a volume product,
18 meaning going to many, many customers, and by definition,
19 when you have such product, you want to deal with more
08:42:18 20 common problems that affect more of your customers than
21 are specific very unique situations.

22 In this case, again, I didn't recall this
23 before, but reading this e-mail's thread, otherwise a
24 very specific, very verticalized partner add-on that was
08:42:35 25 part of the system, and, therefore, this was a very

1 unique situation.

2 And generically, one would want the people
3 to work on the volume or the more common type of
4 customers.

08:42:52 5 Q. Okay. I don't see anything in your e-mail relating
6 to the vertical solution, but I do see it in reference to
7 the number of users.

8 Is it fair to say that that's -- that's the
9 issue that you were primarily focused on, is the fact
08:43:10 10 that they had been sold 120 users?

11 A. It's hard to say from this.

12 This was in, you know, I write hundreds of
13 e-mails a day. This was probably an easy way to say I
14 don't think it's -- it's a regular or common customer,
08:43:26 15 but I don't know what I had in mind.

16 Q. Okay. You have two recommendations down at the
17 bottom, correct?

18 A. Um-hmm.

19 Q. The first one is to go for a reimbursement.

08:43:42 20 Do you see that?

21 A. Yes, I do.

22 Q. Did you have the authority to issue a reimbursement
23 at this point?

24 A. No, I did not.

08:43:58 25 Q. Who had that authority?

1 A. I don't even know exactly, but I assume it would be
2 in the partner organization, which was the organization
3 working with -- with partners that were selling the
4 product.

08:44:16 5 Q. As the head of the organization that oversaw SAP
6 Business One, why did you not have that authority?

7 A. It's just how companies are -- or SAP at the time
8 was organized.

9 My organization was called a PTU, a product
08:44:34 10 and technology unit, and then the -- there are other
11 functions responsible for sales, direct or indirect
12 sales, and they were the only ones who had the authority
13 to sell or to reimburse, and to reimburse I guess.

14 Q. Where was the organization responsible for sales
08:45:02 15 located?

16 A. It was all over.

17 Sales is -- sales was built regionally so
18 there was an SAP America sales organization which had a
19 Business One channel organization within it.

08:45:17 20 There were similar organizations in the
21 other geographies and there was a central -- central
22 channel sales for Business One, kind of corporate, which
23 I don't recall where. I mean, I think Niels is the
24 person, Niels Stenfeldt reported to that organization and
08:45:39 25 again they were geographically -- geographically all over

1 the place, in Europe and the U.S. and other places.

2 Q. Do you know whether a reimbursement actually
3 occurred?

4 A. No, I don't.

08:45:59 5 Q. Your second bullet point is we debriefed the whole
6 process that got us to having this customer in the first
7 place?

8 A. Yes.

9 Q. Do you know what you meant by that?

08:46:12 10 A. Yeah, I can read it now and I don't know what I
11 meant at the time, but I can understand now that if this
12 is, indeed, not the combination of what the customer is
13 using is not a right fit for the product, we need to
14 understand how the product was sold or how -- or more
08:46:30 15 importantly, how we can avoid similar situations in the
16 future.

17 I assume this is what I meant.

18 Q. Did you follow up on that recommendation and ensure
19 that that situation was analyzed?

08:46:44 20 A. I don't remember that I did. Maybe. Maybe not.

21 Q. Would you turn to the first page which is
22 Mr. Kraus's response to your e-mail?

23 A. Yes. First page, right?

24 Q. Correct. SAP 5571?

08:47:11 25 A. 5571?

1 Q. The e-mail from Dan Kraus?

2 A. Okay, yeah, second page.

3 Q. Oh, I'm sorry. You're right. That is the second
4 page.

08:47:20 5 Dan Kraus replies to you, "Udi, this
6 customer was sold in 2004 before there was any announced
7 or understood issue."

8 Do you see that statement?

9 A. Um-hmm. I do.

08:47:33 10 Q. What's the announced or understood issue he's
11 referring to?

12 A. I have no clue. I don't know. I mean, he says it
13 later on.

14 Q. He --

08:47:44 15 A. He says later on, "The issue has been," et cetera,
16 but I don't recall that.

17 Q. You don't recall what specific announced issue he's
18 referring to?

19 A. I don't recall, no.

08:48:02 20 Q. A couple e-mails up at the top is your reply to Dan
21 Kraus, correct?

22 A. A couple of e-mails --

23 Q. At the very top of that page, an e-mail from --

24 A. Yeah. Yeah. Yeah.

08:48:17 25 Q. -- from you to Dan Kraus?

1 A. I see it.

2 Q. At three -- at 3:12 p.m.?

3 A. Um-hmm.

08:48:28

4 Q. You made the statement, "Too bad we didn't stop the
5 implementation of B1 before it started."

6 A. Yes.

7 Q. Do you have a recollection of making that
8 statement?

9 A. No, I don't.

08:48:33

10 Q. Do you recall whether you understood at the time
11 SAP had sufficient information to know whether the
12 implementation should be -- should have been stopped?

13 A. No, I -- I don't know. Obviously it's a frustrated
14 answer, but I don't know that I knew whether we had
08:48:54 15 information on it before or not.

16 Q. Would you turn to the very first page of that
17 document, SAP 5570?

18 A. Um-hmm.

08:49:14

19 Q. There's an internal communication between Dan Kraus
20 and Michael Sotnick they didn't copy you on, but they're
21 referencing your e-mails.

22 A. Um-hmm.

23 Q. Correct?

24 A. Seems that way, yes.

08:49:25

25 Q. Yes. Do you know what Mr. Sotnick meant by the

1 statement in the e-mail at the very top, "Too bad I
2 didn't know the limitations of the product in 2004"?

3 A. No. You'd have to ask him. I have no clue.

4 Q. Well, as the head of the small business

08:49:49 5 organization for SAP, is it -- is it your belief that
6 information concerning limitations of Business One was
7 not communicated to Mr. Sotnick and Mr. Kraus's
8 organization?

9 A. I don't know. I mean, obviously there were
08:50:10 10 different types or different communication on an ongoing
11 basis between solution marketing and the field, which is
12 where Sotnick and Mike -- and Dan Kraus worked, but I
13 don't know exactly what he's referring to as limitation.

14 Q. Well, whose responsibility is it to ensure that
08:50:36 15 information concerning the product limitations is
16 communicated to the sales field?

17 A. It's -- there's a flow of information that starts
18 from the product organization, goes -- or development
19 organization and testing, goes into product or solution
08:50:58 20 management, and then goes into solution marketing which
21 is the one communicating to the field.

22 Q. Okay. Were all of those, I guess, branches for SAP
23 Business One under your oversight?

24 A. No, the last mile, the solution marketing, was not
08:51:20 25 in my organization.

1 That was a separate organization within
2 SAP.

3 Q. And just so I'm correct, your organization would
4 actually develop and compile the information and provide
08:51:32 5 it to the marketing organization who would then
6 communicate it to the field, is that a correct summation?

7 A. Yeah, that's the normal flow, yes.

8 Q. Okay. To your knowledge, was there ever a break in
9 the flow of that communication that would have resulted
08:51:57 10 in Mr. Sotnick and Mr. Kraus not being provided with the
11 limitations of SAP Business One at any given point in
12 time?

13 A. No. I don't know of any break of -- of this flow.
14 I don't recall that there was or wasn't.

08:52:14 15 Q. Okay. Mr. Sotnick ends his e-mail with a suggested
16 response to you, one of which is that there is no
17 mechanism for him to execute \$100,000 reimbursements.

18 Do you see that?

19 A. Yeah, I do.

08:52:33 20 Q. Do you know what that referred to?

21 A. Only what I can understand in English.

22 Basically saying he doesn't have the budget
23 or mechanism to -- to reimburse.

24 Q. And he also suggested leaving the door open for you
08:52:53 25 to elect to reimburse the customer.

1 Do you see that?

2 A. Yeah, I do.

3 Q. Was that something that you could have done?

08:53:10

4 A. Theoretically speaking, I could transfer budget to
5 the right organization that would reimburse, yeah.

6 Theoretically, yes.

7 Q. Do you know whether you did that?

8 A. I don't recall.

08:53:32

9 Q. Can you -- can you explain to me why it's -- why
10 the customer shouldn't be reimbursed just because there
11 isn't a budget mechanism in place?

12 In other words, if a customer is entitled
13 to reimbursement, as you clearly thought, shouldn't they
14 be reimbursed?

08:53:49

15 A MALE SPEAKER: Objection to form.

16 A. I honestly don't know.

17 Q. Do you have any recollection of what specific
18 problems Hodell was experiencing as of April 13th, 2007?

19 A. No, I actually don't.

08:54:07

20 Q. Do you have any knowledge as to whether there was
21 more than one problem that was occurring that was being
22 looked at by SAP?

23 A. No, I don't know.

08:54:29

24 Q. Okay. Could you turn to Exhibit 77? It's an
25 exhibit that's already been marked.

1 Let me know when you're ready.

2 A. Okay. Will do.

3 (Pause).

4 Okay. Ready.

08:56:37 5 Q. Is Exhibit 77 one of the communications you
6 reviewed in preparing for this testimony today?

7 A. I don't recall. The -- the bottom part of it is
8 something we've seen today, but I don't recall if I saw
9 it two weeks ago or not.

08:56:58 10 Q. After reviewing it, is it fair to state that this
11 is a communication between yourself and the partner, Dan
12 Lowery, in response to his initial e-mail to you?

13 A. Yeah. It's actually a response to another e-mail,
14 but not the initial one, but, yes, it's an exchange up
08:57:21 15 until the last e-mail, it's a change between myself and
16 Dan Lowery.

17 Q. Right. And, in fact, on the page that's labeled
18 SAP 4612 --

19 A. Um-hmm.

08:57:38 20 Q. -- the fourth page in --

21 A. Yeah.

22 Q. -- he sent -- Dan Lowery sent you -- Dan Lowery
23 sent you an e-mail April 12th, 2007, which looks like a
24 follow-up to his initial e-mail?

08:57:53 25 A. Yeah, I see it.

1 Q. And, in fact, he's following up and telling you
2 that Hodell's bleeding money and threatening to throw out
3 the system?

4 A. Um-hmm.

08:58:05 5 Q. Do you see that?

6 A. Yes, I do.

7 Q. And you reply to him on the second page in,
8 correct?

9 A. Well, initially --

08:58:18 10 Q. Over there?

11 A. Yeah.

12 Q. On the page that's labeled SAP 4610?

13 A. Yeah.

14 Q. And you tell him again that the customer's
08:58:38 15 environment is far outside the Sweet Spot of Business One
16 and again you reference the user count, correct?

17 A. I reference the user count and the et cetera,
18 meaning other things, yes.

19 Q. And, again, based upon the user counts, you would
08:58:56 20 anticipate that performance problems would arise, is that
21 correct?

22 A. It's hard to tell from this. Obviously, I refer to
23 the user count although the user count is the easiest to
24 reference. Just the fact that it says with 120 users and
08:59:14 25 et cetera, meaning there are other things here that make

1 the specific customer outside the Sweet Spot.

2 Q. Okay. And then Dan Lowery replied to you stating
3 that he wasn't aware of that Sweet Spot, correct?

4 A. Yeah, more or less.

08:59:40 5 Q. Okay.

6 And then you forwarded that on to Dan Kraus
7 and some other individuals within SAP and that's the top
8 e-mail on Page 4609, is that correct?

9 A. Correct.

08:59:59 10 Q. And one of those individuals is Rodney Seligmann.

11 Do you know who Rodney Seligmann is?

12 A. I recall the name, but I don't recall who -- what
13 exactly role he had.

14 Q. Your e-mail message to Mr. Kraus and these other
09:00:20 15 individuals, again, is that someone needs to tell the
16 partner about the Business One Sweet Spot and that an
17 environment of 120 users and growing is nowhere near it,
18 correct?

19 A. That's what it says, yes.

09:00:35 20 Q. Again, you're using the customer's user count as a
21 basis for determining that they're outside the Sweet
22 Spot, correct?

23 A. Yeah, that's what it -- that's what it says here in
24 the e-mail.

09:00:51 25 Q. And, in fact, you knew that the customer's

1 environment was going to be growing, which it appears at
2 least as of April 15th, 2007?

3 A. Yeah, I don't know if this was in the thread or
4 not, but apparently someone said that -- I think -- yeah,
09:01:11 5 I think it says it here -- scale -- they're planning more
6 acquisition and adding more users, on the following page,
7 so I guess I concluded from that.

8 Q. Based upon your recollection, can you call upon
9 your memory and think of any successful installation of
09:01:31 10 SAP Business One where it was installed in an environment
11 of 120 users?

12 A. I don't recall the number of users per
13 installations, no, I don't.

14 Q. Can you recall a successful installation of SAP
09:01:49 15 Business One in an environment where there were 240
16 users?

17 A. No, as I said, I don't -- I don't recall the number
18 of users per installation.

19 Q. If there was an installation of SAP Business One in
09:02:13 20 an environment of in excess of 200 users, don't you think
21 that would be something you would recall?

22 A. I don't know. I may. I may and I may not.

23 I don't know. I don't recall if there was.

24 Q. Can you turn to Tab 13? Let's mark that as 246.

09:03:01 25 You can review that and let me know when

1 you're finished. Bottom right-hand corner, that's SAP
2 2692.

3 A. Thank you.

4 THE VIDEOGRAPHER: Counsel, we're at five
09:06:30 5 minutes for the tape.

6 A. Okay. Ready.

7 Q. Exhibit 246, this is a series of e-mails, some of
8 which you're copied on and some of which you're not,
9 correct?

09:07:04 10 A. Yeah. Seems that way.

11 Q. Okay. Having reviewed Exhibit 246, does that help
12 you refresh your recollection at all as to what the hot
13 fix you were referencing in Exhibit 69 was?

14 A. No, it doesn't. It doesn't give me any more
09:07:25 15 details, other than it's a hot fix for the specific
16 partner add-on. That's the only thing it says here.

17 Q. Right. Are you referencing the e-mail from Ralf
18 Mehnert-Meland at the bottom of the first page of Exhibit
19 246?

09:07:47 20 A. Bottom of what page? Sorry.

21 Q. It's at the bottom of SAP 2692, an e-mail from Ralf
22 Mehnert-Meland to some other individuals.

23 A. Yes. Correct.

24 Q. And he's identifying two basic issues relating to
09:08:05 25 the performance, correct?

1 A. Yeah.

2 Q. One being the add-on and the other being
3 performance degrades of larger data sets, correct?

4 A. Correct.

09:08:21 5 Q. And the third paragraph there, he says the upcoming
6 April fix may resolve the add-on performance issue.

7 Do you see that?

8 A. Yes.

9 Q. Is that the hot fix you were referencing in your
09:08:34 10 prior e-mail, Exhibit 69?

11 A. I assume so. It's hard to tell, but I assume so.

12 Q. Okay. Mr. Mehnert, Ralf Mehnert-Meland is also
13 saying there's another issue which is the data set issue,
14 correct?

09:08:50 15 A. Yeah. That's what he says.

16 Q. What's your understanding of what that issue is?

17 A. I assume he says here somewhere in the large data
18 set -- data set, this is something we've talked about I
19 guess two hours ago, with the larger the data set, that
09:09:12 20 more time it takes to -- for the system to query or to
21 enter data into the system.

22 And, therefore, again, I don't know what
23 the volume of data he's -- he's -- he's referring to,
24 what is the volume he's referring to, but generically the
09:09:28 25 larger the data set, the less performance -- performing

1 the system would be or the more performance issues you
2 may have.

3 So that, that's my understanding.

4 Q. Is that a function of the number of concurrent
09:09:44 5 users operating a software, or is that a different issue?

6 A. The data set is a combination of many, many, many
7 different things, one of which is obviously the number of
8 concurrent users, but it's also the number of items in
9 the catalog, the number of lines in an order, and
09:10:06 10 probably many other things that I don't remember at
11 the -- at this point.

12 So it's a -- it's a --

13 Q. Okay.

14 A. It's a combination, it's more or less a
09:10:16 15 multiplication of many different numbers.

16 Q. Mr. Ziv, I want to stay on Ralf Mehnert-Meland's
17 e-mail down at the bottom of SAP 2692.

18 A. Yes.

19 Q. And in specific, his comments about the data set
09:10:33 20 issues.

21 He states there at the very end there,
22 "This is an issue that has been known for years."

23 Do you see that statement?

24 A. Yes. I can see it.

09:10:45 25 Q. Do you concur with his assessment there?

1 A. I don't know exactly what he meant. As I said,
2 generically, large data sets create performance
3 bottlenecks, but I don't know exactly what he was
4 referring to.

09:11:04 5 Q. Well, the large data set issue, in terms of
6 creating performance bottlenecks, was that an issue with
7 SAP Business One throughout its -- throughout your
8 involvement with the software?

9 A. You know, I don't know -- you know, I don't know
09:11:28 10 exactly what you mean by was that an issue.

11 I mean, generically, it's an issue. If you
12 have too much data in your database, and you try to query
13 it, it takes time. So that's -- that's kind of a generic
14 problem that comes with the territory.

09:11:42 15 I don't -- I mean, obviously we had many,
16 many, many customers who did not have performance issues,
17 so that, from that perspective, I don't think it was
18 something that was common for Business One or however you
19 phrased it.

09:12:01 20 Q. Okay. Well, some, some ERP softwares can handle
21 large data sets, correct?

22 A. Well, depending what large is, but some can handle
23 more than others, yes.

24 Q. Right. And SAP Business One was not a software
09:12:24 25 that could handle a very large amount of data, is that

1 correct?

2 A. It takes more qualification than just saying a
3 large amount of data, but generically speaking, SAP
4 Business One was -- did not handle size of data as well
09:12:42 5 as R3, for example. It was not planned to handle that
6 data, just as a comparison.

7 Q. Was it planned to handle the amount of data that A1
8 was able to handle?

9 A. I don't know exactly what A1 was aimed to handle,
09:12:58 10 but I assume, since it was aiming higher up the company
11 size, the answer would be -- would be no.

12 But that's only an assumption.

13 Q. Okay. The amount of data that SAP Business One
14 could handle, did that remain the same during your
09:13:19 15 involvement in -- with the software?

16 In other -- another way to phrase that,
17 when Mr. Mehnert-Meland sent this e-mail, SAP Business
18 One couldn't handle less data than it could handle, let's
19 say in 2004, is that fair?

09:13:40 20 A. Yeah, I think that's a fair statement. Although as
21 a disclaimer to that statement, the amount of data is not
22 the only thing that is affecting performance.

23 Q. What do you mean by that?

24 A. I mean depending on the type of data and the
09:13:59 25 complexity of the usage, for example, different add-ons

1 that are accessing the data and what type of queries they
2 are doing, so it's much more complex than just saying the
3 size of data is -- is the metric for performance.

4 Q. I want to reference Mr. Mehnert-Meland's summary.
09:14:17 5 He states, "Hodell just has too much data. SAP Business
6 One cannot handle it and there is no fix in sight. I
7 believe we need to find a way to get the customer off of
8 SAP Business One."

9 Do you see that?

09:14:28 10 A. Yeah, I do.

11 Q. Do you know whether or not Mr. Mehnert-Meland's
12 qualified to make that determination?

13 A. I don't know. He, I mean, he was part of the field
14 organization so obviously unless, you know, he got very
09:14:50 15 specific information from the technical people, he
16 wouldn't be the one to call or to say whether this was
17 too large or not too large, but he may have gotten this
18 information from somewhere.

19 Q. Let me turn to Tab 15 and mark that as 247.

09:15:06 20 A. Tab 15?

21 Q. Yes. SAP 3644.

22 A. Thank you.

23 Okay. You want me to read it?

24 Q. Review as much as you'd like. I'm just going to
09:15:43 25 ask you about the e-mail, your e-mail at the top.

1 A. Okay. Let me just skim through the rest.

2 Okay. Ready.

3 Q. Exhibit 247 is -- consists of an e-mail that Dan
4 Lowery had forwarded to yourself and some others at SAP
09:16:37 5 from Otto Reidl at Hodell, correct?

6 A. I don't know if it was forwarded to me, but I
7 think -- yes, yes, you're right.

8 Q. Okay. And Mr. Reidl is letting Dan Lowery know
9 about the problems they're having with the installation
09:17:01 10 of Business One at their site, correct?

11 A. Yes.

12 Q. And then that information's forwarded on to you and
13 Dirk Boessmann?

14 A. Correct.

09:17:17 15 Q. Correct?

16 A. Yes.

17 Q. And you forwarded that, in turn, on to Dan Kraus,
18 Niels Stenfeldt and Dirk Boessmann?

19 A. Um-hmm. Yes.

09:17:28 20 Q. And you -- and again you opine, "There's not much
21 we can do here. We will supply what may be a fix for the
22 current problem, but we know there will be others. There
23 is no doubt that this is not a B1 customer and we somehow
24 need to get away from this."

09:17:47 25 Do you see that?

1 A. Yes, I do.

2 Q. Was that statement true at the time it was made?

3 A. I assume so.

09:18:04

4 Q. Do you know what information you had that led you
5 to that conclusion?

6 A. I can only assume that I had information that I
7 just reviewed here, all the prior e-mails of the last, I
8 guess, almost two weeks of -- since this was first
9 brought to my attention.

09:18:15

10 Q. Okay. Can you turn to Exhibit 79, previously
11 marked as Exhibit 79? You can read as much of that as
12 you'd like, but I'm only going to ask you about -- let me
13 ask you about the e-mail at the bottom of SAP 915.

14 A. 915?

09:19:26

15 Q. Yes.

16 A. Hold on. 915, yes.

17 Q. It's an e-mail from Dale Van Leeuwen to Ralf
18 Mehnert-Meland, February 27th, 2006?

19 A. Um-hmm.

09:19:52

20 Q. And down about halfway through the e-mail,
21 Mr. Van Leeuwen states, "To assist you in understanding
22 the environment we are deploying, let me provide the
23 following." And he lists out certain information?

24 A. Um-hmm.

09:20:09

25 Q. One of which is the database size has approximately

1 150,000 SKUs, 20,000 customers, 7,500 vendors?

2 A. Um-hmm.

3 Q. And then on the next page, the very last, he
4 writes, "Client will be running with 120 users."

09:20:39 5 A. Um-hmm.

6 Q. Based upon what you know about SAP Business One as
7 the head of the small business unit, is that information
8 sufficient for you to determine that SAP Business One is
9 not an appropriate solution for this customer?

09:21:06 10 A. No. It's hard to tell.

11 I mean, there's definitely more information
12 here than there was anywhere in the documents I've
13 reviewed before, but it's hard to tell.

14 No, it's -- I mean, the usage, what type of
09:21:22 15 add-ons are being run, if at all, no, it's -- it's
16 probably not enough.

17 Q. Well, what additional information would you need at
18 this point?

19 A. I need to really know -- you need to understand
09:21:40 20 exactly what -- what the exact usage is, meaning what are
21 the, each one of the users doing, how many different
22 orders they open a day, how many -- how many lines per
23 order they open.

24 If you don't have that, it's difficult to
09:22:01 25 assess just from the numbers you have here what would

1 be -- I mean, it's difficult to test exactly the system
2 in this environment, and, therefore, it would be very
3 difficult to know whether it -- it can scale to this
4 level or not.

09:22:18 5 Q. At the very least, this would have been a red flag
6 with respect to whether this was an appropriate
7 deployment of Business One, isn't that true?

8 A. I don't recall if this -- this would have been a
9 red flag or any other type of flag, depending on the
09:22:36 10 number.

11 As I said, you know, later on it says 120
12 users. By itself, this would drive -- maybe not a red
13 flag, but a desire to know more of the usage in order to
14 make sure it's -- it can function well.

09:22:57 15 Q. Isn't it true that the database size of 150,000
16 SKUs, 20,000 customers, and 7,500 vendors is well outside
17 what had been tested for SAP Business One?

18 A. I don't remember. Don't remember what were the
19 test sets we were using.

09:23:17 20 Q. Well, do you know whether they were remotely close
21 to those numbers?

22 A. I actually don't. Don't remember.

23 Q. If we assume that Mr. Mehnert-Meland was also aware
24 that there would be two add-on products running with SAP
09:23:42 25 Business One along with the information we just reviewed,

1 would you then be able to acknowledge that this was not
2 an appropriate deployment of SAP Business One in this
3 environment?

4 A. No. That probably wouldn't be sufficient either.

09:24:02 5 You know, if the add-ons were heavy on
6 accessing writing, accessing data, writing data, it would
7 probably intuitively say it's going to complicate things,
8 but again, it's not enough.

9 The actual usage of the users is what
09:24:19 10 probably -- combined with all the information about the
11 quantified information here would give us the -- a better
12 approximation.

13 Q. You're telling me that even having that information
14 available to you, you would not be willing to state that
09:24:45 15 at least it's a red flag with regard to whether Business
16 One is going to perform adequately in that environment?

17 A. I -- I'm not sure I understand what the definition
18 of "Red flag" is.

19 Q. Would it raise an alert in your mind as to whether
09:25:06 20 Business One was going to perform adequately in such an
21 environment where there's that many -- that large of a
22 database, that many users, and two add-on products?

23 A. Yeah, as I said before, it probably would have
24 triggered a desire to test or to understand exactly what
09:25:32 25 the usage would be in order to make sure it's -- it can

1 be the right fit.

2 Q. I didn't see any e-mails from you after that April
3 25th, 2007 e-mail.

4 Do you recall having any involvement with
09:25:48 5 Hodell after April, 2007?

6 A. No. I don't recall.

7 Q. Do you recall what the status of the implementation
8 at Hodell was after -- or when he stops being involved?

9 A. No, I don't.

09:26:14 10 Q. Are you familiar with a Business One product
11 "Direction Roadmaps"?

12 A. No, not specifically. No.

13 Q. You've never heard of that document or a document
14 called a Product Development Roadmap before?

09:26:35 15 A. I mean the -- the combination of the words sound
16 familiar, but I don't remember a specific document.

17 Q. How about a Business One statement of direction?

18 A. No, again the name, I mean that combination of
19 words is something that rings a bell, but I don't
09:26:49 20 remember a document.

21 Q. If you look at what's been marked as Exhibit 124 in
22 a previous deposition.

23 A. Yes.

24 Q. Have you ever seen a document like Exhibit 124
09:27:22 25 before?

1 A. I don't recall.

2 Q. Up in the upper left-hand corner the sponsor is
3 Gadi Shamia.

4 Do you see that?

09:27:37 5 A. Yes.

6 Q. He reported directly to you?

7 A. Yes.

8 Q. Is that something he would have given to you to
9 review before it was published?

09:27:46 10 A. I don't remember.

11 Q. You don't remember whether he was required to allow
12 you to review this before it was published?

13 A. I don't remember whether it was required or whether
14 he actually did give it from -- hand it to me for my
09:28:04 15 review.

16 I don't recall.

17 Q. Is this -- looking at information contained in this
18 document, is this something that you would have expected
19 to have the opportunity to review before it was
09:28:19 20 published?

21 A. It's hard to tell. I mean not necessarily the
22 document itself. I mean, obviously the direction, I
23 would probably have to be involved with but not
24 necessarily the document itself.

09:28:43 25 Q. Can you turn to Page 5?

1 A. Um-hmm.

2 Q. And specifically, Section 3.1, summary.

3 A. 3.1, summary, yes.

09:29:04

4 Q. There's a statement in the second paragraph, "In
5 future releases, SAP Business One will focus on the needs
6 of businesses with 10 to 100 employees."

7 A. Um-hmm.

8 Q. Do you see that statement?

09:29:17

9 Do you remember the focus -- does that
10 refresh your recollection as to what the focus of the
11 product was on -- as of April 25th, 2005?

12 A. No, not more than what it says here.

13 Q. Well, do you have any reason to think that's not
14 the case?

09:29:35

15 A. No.

16 Q. Something I forgot to ask earlier.

17 What's -- what's the relevance of referencing 10 to 100
18 employees? Why is the number of employees relevant?

19 A. Versus number of concurrent users?

09:29:57

20 Q. Right.

21 A. Technically the only thing that matters is
22 concurrent users. It's easier when you speak to -- to a
23 prospect or a partner to -- I mean, they wouldn't know
24 what the number of users would be off the top of their
09:30:16 25 heads.

1 They would know what the size of the
2 company is, so it's easier to talk about number of
3 employees and somehow deduct out of it what would be the
4 usage.

09:30:29 5 Q. Can you turn to 129?

6 A. 120?

7 Q. 129. I'm sorry.

8 A. Yep.

9 Q. This is a Business One statement of direction,
09:30:44 10 2006.

11 First of all, do you have any understanding
12 of how these documents were generated and published?

13 A. No. I -- ouch. I think, as I said before, it was
14 either coming from solution marketing -- solution
09:31:06 15 marketing or from the partners or channel organization
16 within SAP.

17 I don't -- but I don't know.

18 Q. Okay. Can you review -- can you turn to Page 19?

19 A. Certainly can.

09:31:21 20 Q. There's a page called Project Team.

21 A. Hold on. Project Team, yes.

22 Q. Is a document owner an author and reviewer?

23 A. Um-hmm.

24 Q. You're listed as one of the reviewers?

09:31:41 25 A. Um-hmm.

1 Q. Does that refresh your recollection as to whether
2 you reviewed this document?

3 A. No, it doesn't. It just says what it says here,
4 that I was -- no, I don't recall reviewing this.

09:31:56 5 Q. Do you have any reason to think that that
6 information is false?

7 A. No, I don't have a reason, although, you know,
8 it's -- I assume it's a standard thing that it -- in my
9 position, Gadi's position, we were supposed to review
09:32:14 10 these things but I don't -- no, I don't.

11 Q. Can you turn to Page 7?

12 A. Um-hmm. Page 7.

13 Q. This is called Summary SAP Business One
14 Positioning?

09:32:38 15 A. Yes.

16 Q. I guess a more basic question, this, the first page
17 of this document reveals it was published on March -- in
18 March, 2006.

19 That being the case, when would the
09:32:53 20 information necessary to publish this document have been
21 compiled?

22 A. I have no -- no knowledge of that. I don't know.

23 Q. Well, are these -- are these documents compiled or
24 based upon information that are compiled over the course
09:33:13 25 of the previous year?

1 A. I don't know. As I said, I don't know.

2 Q. Okay. Turning back to Page 7 --

3 A. Um-hmm.

09:33:30

4 Q. -- there's two columns. I'm referencing the second
5 paragraph in the left-hand -- left-side column, starts
6 "While SAP Business One has many satisfied larger
7 customers, it is ideally suited with companies with 10 to
8 100 employees."

9 A. Um-hmm.

09:33:47

10 Q. Then it ends with the sentence, "SAP Business One
11 is optimized for performance with up to 50 concurrent
12 users."

13 Do you see that?

14 A. Um-hmm. I do.

09:33:56

15 Q. Is that your understanding of where Business One
16 was positioned as of March, 2006?

17 A. Yeah. That's what it says here.

18 A MALE SPEAKER: Excuse me, counsel. We
19 have --

09:34:11

20 Q. Do you disagree with that?

21 A. I, since I don't recall the actual numbers, I -- I
22 have no reason to disagree or agree.

23 I don't know. But that's what it says
24 here.

09:34:22

25 Q. In the right-hand column down at the bottom, it

1 says, "Our experience shows."

2 A. Yes.

3 Q. Do you see that paragraph?

4 A. Yes.

09:34:34 5 Q. Do you know what experience that's based upon?

6 A. No, I don't.

7 Q. Then it lists a series of customer profiles that
8 would be suitable for Business One.

9 Do you see that?

09:34:50 10 A. Um-hmm. Yes.

11 Q. One of them is moderate customization requirements?

12 A. Correct.

13 Q. And 10 to 100 employees?

14 A. Um-hmm, with the footnote that it's not a -- the
09:35:18 15 most predictive indicator, yes.

16 Q. Mr. Ziv, I represent LSi channel partner in this
17 case. Would you go to Exhibit 69, please.

18 That's your internal e-mail chain?

19 A. Is it here already? Have we --

09:35:39 20 Q. You have it?

21 A. Have we reviewed it already?

22 Q. Yes.

23 A. Okay.

24 Q. Yes, you have.

09:35:45 25 A. Okay.

1 I'm looking. I know, just -- 77. I'll
2 find it. 69, you said?

3 Q. When you see 70 -- when you see 70, pull that out,
4 also.

09:36:07 5 A. Here's 69. I don't think I --

6 A MALE SPEAKER: I have 70.

7 A. You have 70? Okay. Yes, we have both. Which one.

8 Q. Okay. 69, I'm looking at your response to -- that
9 you sent to Dan Kraus April 12th at 2:51 p.m.

09:36:31 10 Were the statements you made in that e-mail
11 to Dan Kraus obvious to you based upon the information
12 that had been communicated to you by Dan Kraus and Dan
13 Lowery?

14 A. You're asking if it was obvious. I don't know
09:36:52 15 what -- I don't know what was obvious or not.

16 I mean, I can read what I wrote, but I
17 don't know what was obvious and what wasn't.

18 Q. Well, more likely than that, did you do any
19 independent investigation or research in preparation of
09:37:06 20 writing this e-mail?

21 A. I don't remember. I -- I doubt I wrote it without
22 addressing some other people in the organization because
23 these are usually things I wouldn't be dealing with
24 directly, but I don't know.

09:37:20 25 Q. More likely than not, who would you have talked to?

1 A. Most probably at least Dirk Boessmann who's copied
2 on this e-mail. He was, as I said before, in charge of
3 the IBD, Install Base Development, so under his
4 responsibility was all current customers using current
09:37:41 5 products.

6 Q. Would you go to Tab 13, which is Exhibit 246.

7 A. Um-hmm. Yep. Got it.

8 Q. All right. The first page of it, Ralf
9 Mehnert-Meland's April 16th e-mail at 5:46 p.m.?

09:38:12 10 A. Um-hmm.

11 Q. He was talking about the two problems. One was
12 accessing the SAP Business One, and, two was the
13 performance degrade with large databases.

14 Is my understanding correct that the point
09:38:27 15 number one, the add-on products accessing SAP Business
16 One, that's the DI API issue?

17 A. I don't remember.

18 Q. The --

19 A. I don't remember.

09:38:45 20 Q. You don't remember?

21 A. No.

22 Q. Do you remember that being an issue with the
23 Business One product, the DI API?

24 A. No, I don't.

09:39:04 25 Q. Point number two, performance degrades with large

1 data sets, that was a problem with the B1 program itself,
2 is that correct?

3 A. Well, I think Ralf's assumption was that there was
4 a problem with the large data set, and I assume it's in
09:39:24 5 Business One itself, yes.

6 (End of video)

7 THE COURT: Is that it?

8 MS. LUARDE: Yes.

9 THE COURT: Okay. You can call your next
09:39:37 10 witness then.

11 MR. STAR: Your Honor, we would play our
12 designation next.

13 THE COURT: Oh, go ahead.

14 MR. STAR: Thank you.

09:39:51 15 (Video played as follows:)

16 A. No.

17 Q. Are you familiar with the name LSi-Lowery Systems?

18 A. Only from reading the -- a few of the documents
19 that were sent to me.

09:40:28 20 Q. Okay. Are you aware that they're the SAP business
21 partner that sold Business One to Hodell-Natco?

22 A. Yes, I am.

23 Q. Okay. Have you had any communications with anyone
24 at LSi regarding this lawsuit?

09:40:42 25 A. Not that I recall.

1 Q. Okay. Have you had any communications with anyone
2 else regarding the lawsuit?

3 A. No.

4 Q. Mr. Ziv, who are you employed by?

09:40:57 5 A. A company called Nice Systems.

6 Q. What do you do with Nice Systems?

7 A. I'm the president of the enterprise group at Nice.

8 Q. Can you just give me a summary of your job duties
9 and responsibilities?

09:41:15 10 A. My current job?

11 Q. Yes.

12 A. Nice is built out of three divisions or groups.

13 I'm responsible for one of them, which is selling

14 to -- mainly to contact centers and trading floors,

09:41:30 15 mainly voice recording systems and speech analytic

16 systems, workforce management, workforce optimization and

17 other similar systems.

18 I'm responsible for strategy, products.

19 That's basically it.

09:41:47 20 Q. Are you a shareholder in this?

21 A. Only via employee options.

22 Q. Was SAP Business One a two-tier architecture
23 product?

24 A. Yes, it was, as far as I recall.

09:42:02 25 Q. Are there inherent limitations in software that's

1 two-tier architecture?

2 A. Generically again, I don't remember exactly how
3 Business One was built, but two-tier application, you
4 have business logic on the client versus a
09:42:27 5 two -- three-tier where business logic resides centrally.
6 So in terms of distribution of software, it's more
7 complicated, et cetera.

8 That's as much as I can say.

9 Q. Well, does two-tier architecture limit the
09:42:45 10 scalability of the software?

11 A. Not necessarily.

12 Q. Why do you say not necessarily?

13 A. I mean generically speaking, I think two-tier
14 applications can be very scalable and extremely not
09:43:05 15 scalable, but that's generic. Has nothing to do with
16 anything specific.

17 Q. Well, the two-tier architecture of SAP Business
18 One, which end of that spectrum do you feel it fell on?

19 A. I -- I don't know.

09:43:22 20 Q. You don't recall?

21 A. You know, I mean, I don't recall the numbers, and I
22 don't know exactly what you mean, what end of the scale
23 it fell on.

24 Q. Well, was SAP Business One extremely scalable -- as
09:43:40 25 you said some two-tier architectures can be -- or was it

1 very limited in scalability?

2 A. I don't know. It's subjective because it's
3 completely subjective. Obviously it was -- it was
4 somewhere in between those two terms, I assume, but
09:43:58 5 extremely subjective.

6 Q. Do you recall whether SAP conducted tests of
7 Business One's capabilities?

8 A. Yes, we did.

9 Q. What kinds of tests were conducted?

09:44:15 10 A. A few types. Unit tests from us testing each
11 component as a unit individually, and then functionality
12 testing on the overall product, and then load testing,
13 which is usually done automatically for -- for capacity.

14 Q. This load testing, well, the testing that would
09:44:47 15 have been done to determine the maximum number of
16 concurrent users that the product could support?

17 A. Theoretically speaking, yes, although it's
18 impossible to separate, you know, one parameter from the
19 other, so obviously when you load test a system, you take
09:45:06 20 different parameters, like number of items in the
21 catalog, number of lines in an order, and number of
22 concurrent users, and mix them together to -- and
23 possibly others that I don't recall, and to come up with
24 what is a typical capacity, I guess.

09:45:22 25 Q. Do you recall the maximum number of concurrent

1 users that SAP tested Business One with?

2 A. No, I don't.

3 Q. What was the purpose of conducting the tests we've
4 been talking about?

09:45:42 5 A. Every product, every software product, or I guess
6 every product, but every software product goes through
7 similar testing, unit testing, functionality testing, and
8 then automatic testing for load and sustainability of the
9 software, so the purpose was to see that the product is
09:46:00 10 doing what it's supposed to do.

11 Q. I'm sorry. I didn't hear the last part of your
12 answer.

13 A. The last part was that --

14 Q. The purpose?

09:46:09 15 A. Was to see or check that the product is doing what
16 it's supposed to be doing.

17 Q. What's the difference between development and
18 testing?

19 A. Development -- sorry?

09:46:25 20 Q. As you're using those terms, I take it there were
21 two different departments at SAP for development and for
22 testing, is that correct?

23 A. Yeah. The development is what -- are the people
24 who are actually writing the software, writing the code
09:46:43 25 that creates or makes the software.

1 Testing are people that are taking what the
2 development are producing, and again testing it that
3 it -- to check whether it does what it's supposed to do.

09:47:00

4 Q. Well, do you recall whether Business One was
5 marketed to the mid market as well?

6 A. No. Business One was a small business solution.

7 Q. Okay. So it's your understanding that Business One
8 was never intended to be sold to companies in the mid
9 market, correct?

09:47:21

10 A. I don't think I can categorically say that.

11 Product is meant for, you know, a segment,
12 in this case Business One for small businesses, but
13 depending on the situation, can be sold elsewhere.

09:47:39

14 Q. Would it -- would it be fair to categorize the term
15 "Performance" as achieving response times in the product?

16 A. Sometimes. Sometimes performance could mean other
17 things.

18 Q. Okay. We'll come back to that.

09:48:01

19 Do you recall performance being a key pain
20 point with respect to Business One in 2005?

21 A. No, I don't.

22 Q. Well, do you recall prior to January, 2006 being
23 aware of the maximum concurrent users that could be
24 supported on SAP Business One?

09:48:21

25 A. No, I don't, and I think the important -- I mean,

1 there isn't a single maximum number anyways. It really
2 depends on the situation as it says here, specific
3 hardware and business volume, et cetera.

4 But I don't recall the number.

09:48:35 5 Q. Do you know what a hot fix is?

6 A. Yes. There are different ways to --

7 Q. What's a hot fix?

8 A. Yeah, there are different ways to make changes to a
9 product in a customer environment.

09:48:59 10 There are kind of levels. One is to
11 completely upgrade to a newer version. The other is
12 to -- which is referred to here as a patch, which is a
13 collection of different bug fixes and corrections that
14 are tested and deployed as a -- as a bundle of
09:49:26 15 corrections.

16 And a hot fix is one, one chain -- one bug
17 fix or correction you make for a specific problem and you
18 deploy as is, without bundling it with other things and
19 without doing all the holistic and comprehensive testing.

09:49:46 20 Q. Based upon your position as the head of Small
21 Business Solutions for SAP, that information that was
22 communicated to you by Dan Lowery, 120 users and
23 expecting to grow, should that -- should SAP Business One
24 have ever been sold to Hodell in the first place?

09:50:11 25 A. No, I don't think you can reach that conclusion.

1 Q. Was there a method to determine or to test with 120
2 users running concurrently under the environment that
3 Hodell would be implementing SAP Business One?

4 A. At the customer site?

09:50:31 5 Q. How about at -- how about at SAP's site in Israel?

6 A. Yeah, I don't recall the exact dates, but we had
7 tools that could load test the system with users with
8 auto -- kind of automatic users that obviously can go
9 beyond 120.

09:50:51 10 That, by itself, probably would not
11 simulate the Hodell environment, so the only way to
12 really test this with the right add-ons, with the right
13 hardware, with the right setup, with the right scenario
14 the users are doing is to actually do it on site.

09:51:07 15 And to that, I don't know the answer.

16 Q. Is it safe to say that the SDK was designed for
17 smaller app -- for smaller add-on products?

18 A. No, not necessarily.

19 Q. Well, at some point in these -- SAP's marketing
09:51:25 20 literature, it started referencing the number of
21 concurrent users, and as well as the range of employees.

22 A. Um-hmm.

23 Q. And so my question to you is why, why that
24 distinction started to be made?

09:51:37 25 A. I don't remember the reason. I can only imagine

1 that it was because number of employees is a very -- is
2 an approximation because, you know, a company can have
3 200 employees and only two users or 200 employees and 150
4 users, and obviously the performance and the fit would
09:51:59 5 be -- would be different.

6 So I assume that was the reason. They
7 wanted to have more -- a more precise metric versus
8 number of employees which is a faraway approximation.

9 Q. So we can deduce from this statement we just read
09:52:17 10 that SAP Business One is focusing on the needs of
11 businesses with 10 to 100 -- with 10 to 100 employees,
12 they were focusing on businesses with even a less number,
13 less number of users, correct?

14 A. Equal or less, I would say.

09:52:37 15 But if you read the next line, it says here
16 that the focus would be 10 to 100, but continues to meet
17 the needs of many larger businesses of up to 250
18 employees.

19 So obviously from there, you can say that
09:52:50 20 depending on the ratio you want to use, that there can be
21 much more than the number you've mentioned.

22 Q. In your opinion in 2004 or 2005, would it have been
23 sane to market this product to a company with 500 users
24 and a hundred million dollars in revenue?

09:53:15 25 A. As I said, it's a hypothetical question.

1 Depending on what the company is planning
2 on doing with the product, that could be sane or that
3 could be completely not sane or not recommended is a
4 better term.

09:53:29 5 Q. And marketing it to a company with a hundred
6 million dollars in revenue and 250 users could be sane or
7 insane, depending upon the circumstances?

8 A. Could be recommended or not recommended, depending
9 on the circumstances, yes.

09:53:44 10 (End of video)

11 THE COURT: Is that it? Okay.

12 You may call your next witness.

13 MS. LUARDE: Your Honor, we actually have
14 another video clip, Jon Woodrum.

09:53:56 15 THE COURT: Okay. Do you want to set that
16 up? What we'll do is take our morning break at this
17 time, folks. About 15, 20 minutes.

18 Keep in mind the admonition and enjoy your
19 snacks and coffee. See you in about 20 minutes.

09:54:13 20 (Recess taken).

21 (Proceedings resumed in presence of the
22 jury as follows:)

23 THE COURT: You may proceed then.

24 MS. LUARDE: Your Honor, just like
10:20:28 25 yesterday, we have binders with the exhibits.

1 THE COURT: That's great. Thanks.

2 (Video played as follows:)

3 Q. What was the last company you worked for?

4 A. Earnest & Associates.

10:22:05 5 A FEMALE SPEAKER: Raise your right hand,
6 please.

7 JON WOODRUM

8 of lawful age, a witness called by the PLAINTIFFS,

9 being first duly sworn, was examined

10:22:12 10 and testified as follows:)

11 VIDEO EXAMINATION OF JON WOODRUM

12 Q. First of all, I'll ask you about your background.

13 Where do you work now?

14 A. I'm not working for a particular company.

10:22:20 15 Q. Have you retired?

16 A. Semi.

17 Q. Okay. What was the last company you worked for?

18 A. Earnest & Associates.

19 Q. And when did you leave them?

10:22:32 20 A. February 28th of this year.

21 Q. By the time you left, what was your role at

22 Earnest & Associates?

23 A. I was director of their implementation services for

24 their SX Enterprise division.

10:22:52 25 Q. What did that role entail?

1 A. Managing all of the implementations for that
2 particular line of software. It's an ERP software
3 package for them, managing the implementations and the
4 support of that, those customer sites.

10:23:10 5 Q. How long were you in that role with Earnest?

6 A. A little less than two years, June, early June,
7 2010, 2010.

8 Q. During that time was the role you described roughly
9 the same as the role you had throughout your --

10:23:28 10 A. Yes.

11 Q. Immediately before that, where did you work?

12 A. I worked for LSi.

13 Q. And you left them when?

14 A. December of 2009.

10:23:46 15 Q. And at that time how long had you been with LSi?

16 A. I was an employee since '95 and I had done contract
17 work with them a couple years before being employed.

18 Q. Let's go to your contract work with LSi before
19 being employed.

10:24:07 20 What kind of work did you do with LSi then?

21 A. Helping them with their consulting and
22 implementation of the software that they sold and
23 implemented and supported, distribution software.

24 Q. So when you say "Helping," what exactly did you do?

10:24:23 25 A. You help train and manage the projects of the

1 application from the business side of it.

2 Q. Does that mean that you didn't do any coding, for
3 example?

4 A. Correct.

10:24:43 5 Q. Then when you moved to full employment with LSi in
6 '95, was your role the same?

7 A. Pretty much, yes.

8 Q. How did it change?

9 A. Primarily the same responsibility for
10:24:57 10 implementations and support.

11 Q. Throughout your employment with LSi starting in
12 '95, did your role change at all?

13 A. No. It was pretty consistent.

14 Q. Did your title change at all?

10:25:15 15 A. I evolved to a vice president of business, business
16 software support.

17 Q. Roughly when was that?

18 A. I -- I don't know.

19 Q. Was that role at LSi starting in '95 or so, was
10:25:43 20 that the first time you had that kind of role in a
21 company?

22 A. No.

23 Q. Okay. Where was -- which company did you first
24 have that kind of role with?

10:25:52 25 A. I worked 11 years with a company in Denver,

1 Colorado, EBS Data Processing in support and
2 implementations of distribution software.

3 Q. Was that role similar to the role you later had at
4 LSi in terms of your responsibilities and duties?

10:26:19 5 A. They're similar, yes.

6 Q. So fast-forward to today.

7 Are you aware that one of LSi's former
8 customers, Hodell-Natco, filed a lawsuit relating to an
9 implementation of a business software?

10:26:46 10 A. Yes.

11 Q. And that that lawsuit was against LSi and SAP,
12 among other companies?

13 A. Yes.

14 Q. Have you read the complaint that was filed by
10:27:04 15 Hodell-Natco?

16 A. I'm not sure.

17 Q. Okay. Were you involved with the implementation of
18 business software at any point at Hodell-Natco?

19 A. I was involved with -- yes, with the
10:27:28 20 implementation, coordination and management of the people
21 involved.

22 Q. Of which Software Solutions?

23 A. Do you mean Business One, SAP Business One?

24 Q. Or any others, yes. Were you involved with the
10:27:41 25 implementation of SAP Business One at Hodell-Natco?

1 A. Yes.

2 Q. Were you involved with any other implementations at
3 Hodell-Natco of business software?

4 A. No.

10:27:52 5 Q. Okay. When did you first become involved with the
6 Hodell-Natco implementation?

7 A. Closely involved in March, April of '06.

8 Q. When you say, "Closely involved," what does that
9 mean?

10:28:27 10 A. More directly involved in the project as opposed to
11 the -- as opposed to being somewhat on the sides
12 supplying the people that somebody else needed for the
13 project.

14 Q. So when you first started being closely involved at
10:28:50 15 Hodell-Natco's implementation, what was your role?

16 A. Defining what else we needed to implement,
17 articulating that, setting up a schedule of how to
18 accomplish that, conveying that to Hodell-Natco and
19 Lowery, and putting a schedule of events together with
10:29:14 20 frequent monitoring of status and so on to work toward
21 originally, I believe, a December, '06 go-live date.

22 Q. Who did you work with in that role, both at LSi and
23 Hodell-Natco?

24 A. I worked with a number of people at LSi. You want
10:29:42 25 a lot of names or --

1 Q. To the extent you can remember them, sure.

2 A. Well, Dan Lowery, Dale Van Leeuwen, former owner of
3 IBIS, several implementation people, Marcia Weissman, my
4 son, Cain Woodrum, another man named Labi, L-A-B-I, and
10:30:09 5 Joe Guagenti, director of technical services; Gary
6 Johnston, one of the lead programmers, and Kevin Reidl
7 was the primary contact at Hodell-Natco.

8 Q. Was he your primary contact?

9 A. Yes. Yes.

10:30:29 10 Q. Did you work with anyone else at Hodell-Natco on
11 the implementation directly?

12 A. No. Everything coordinated through Kevin.

13 Q. So back to Hodell-Natco, prior to any go-live date
14 that you referred to -- well, first, strike that.

10:30:53 15 Do you recall when Hodell did go live on
16 SAP Business One software?

17 A. Yes.

18 Q. When was that?

19 A. March 7th, I'm going to say '07 end of February,
10:31:11 20 early March.

21 Q. Okay. At that time, was it your personal opinion
22 that Hodell should go live at that time?

23 A. Yes.

24 Q. At the time, did you have any concerns or
10:31:28 25 reservations about Hodell going live at that time?

1 A. Manageable, yes.

2 Q. And when you say "Manageable," what does that mean?

3 A. You didn't -- I didn't see the performance that we
4 would have liked to have seen, but with their agreement,
10:32:01 5 agreed it was acceptable and with all my other software
6 authors and so on, if you wait until you have a hundred
7 percent, everything a hundred percent you never go live
8 so eventually you have to pull the trigger and go live.

9 You wouldn't do it foolishly, but if you
10:32:20 10 think the controls are in place, the testing, stress
11 testing, and so on, you do. But there was, you know, you
12 would rather see nanoseconds than several seconds in
13 response time, and we were -- that's what we were seeing.

14 Q. You mentioned your experience. In your prior
10:32:42 15 experience, were there other occasions when a customer
16 went live with an implementation that had "Manageable"
17 issues or concerns?

18 A. I've experienced very successful implementations
19 with those I've been involved in.

10:33:03 20 They work hard at making sure everybody's
21 in agreement, and they, definition of what it is we're
22 going live with, and that the controls, primarily that
23 the controls are in place, because for several years
24 people didn't parallel, and so you want to make sure your
10:33:27 25 controls are in place when you go live.

1 Q. And what do you mean by "Parallel"?

2 A. Trying to run both your old system and the new
3 system a hundred percent of same documents, same cash
4 receipts, all those things. Something's got to give, and
10:33:46 5 usually the new system gives, and they revert to the one
6 they know best and stuff.

7 So for many years, 15 or more years, I have
8 not seen a parallel orientation on very sophisticated
9 implementations.

10:34:04 10 Q. So when you say 15 years, does that mean starting
11 in the late 90's?

12 A. My first implementation with LSi, one of the first
13 ones, there was no parallel. Going clear back to EBS,
14 when online was first cutting edge, we paralleled, but
10:34:25 15 once it became no longer cutting edge, it wasn't cost
16 effective or necessary to parallel if you did the right
17 checks and balances and knew your controls, how to
18 balance receivables, inventory, payables, documents are
19 processed, so, so a number of years.

10:34:51 20 Q. Just so I understand, after that point, did you say
21 that you never saw an implementation where there was a
22 parallel system live?

23 A. Correct.

24 Q. Okay. In your opinion, was that common in the
10:35:07 25 industry?

1 A. Yes.

2 Q. You also mentioned the term "Stress testing."

3 What does that mean?

4 A. That term the last couple years, it's kind of
10:35:19 5 changed a little bit to -- to just -- it's two things.

6 It's to make sure everybody is ready, and
7 that also the system will hold up while you do it.

8 So if you have a hundred employees or if
9 you have 20 employees, rather than working one-on-one
10:35:37 10 with accounts payable or EDI, you have everybody take a
11 day's worth of work and everybody does -- just everybody
12 engages in what it is they do.

13 You want to know that they know how to do
14 it and, two, if for some reason there's a situation with
10:35:57 15 the network or the system or the printers or anything, so
16 you are stressing the system hopefully as near to what a
17 real environment as you can.

18 Q. Okay. I'm not -- I don't have a technical
19 background either, so forgive me. So how is that done?
10:36:18 20 And I'll give you an example.

21 Does that mean that the new software is
22 fully loaded, or turned on, for lack of better term?

23 A. It is. It is.

24 And you, if you had -- you just take your
10:36:31 25 sales orders, your cash receipts, your accounts payable,

1 your paychecks, everything that you do the day before or
2 some period of time, you try to -- you're not paralleling
3 necessarily, but you're doing all the functions that
4 everybody needs to do.

10:36:48 5 You don't want to go live with your printer
6 not working or somebody saying "How do I enter a sales
7 order?"

8 It's -- you want a true test that you're
9 ready to go. It's a dress rehearsal is -- goes along
10:37:05 10 with the stress test.

11 Q. So for that dress rehearsal, is the customer, for
12 example, Hodell-Natco, is there real customer data used?

13 A. Yes.

14 Q. And is the "New software system" used?

10:37:25 15 A. Yes.

16 Q. So how is that different from when it goes live?

17 A. It's to represent the same situation you're going
18 to be live, but you haven't made the cut-off where you've
19 converted all your data over and you're going to quit
10:37:43 20 working the old system and start working the new on.

21 Q. Ah, okay. So that means that there is or maybe
22 some use of the former still going on?

23 A. There is.

24 Q. Okay.

10:37:56 25 A. Oh, yes. You wouldn't quit using. You may do it

1 two weeks, three weeks before you go live, before the
2 cut-off because if you need to respond to something
3 that -- usually you don't do it until -- you don't want
4 to do it too soon because they forget or it needs to be
10:38:12 5 fairly close to your go-live date, two or three weeks.

6 Q. So does that mean it's sort of like a brief period
7 of parallel?

8 A. Correct. Correct.

9 Q. So and again forgive me, does that mean that some
10:38:27 10 servers, for example, other customers are running the old
11 system and some servers are running the new system, or
12 how does that work in terms of using the two systems
13 simultaneously?

14 A. It depends on what they have their hardware loaded
10:38:44 15 on. They -- the answer to your question could be yes.

16 Q. Okay.

17 A. It could be totally separate servers.

18 Q. How about at Hodell pre-go-live, what happened with
19 this simultaneous brief parallel period?

10:39:00 20 Was it run on all of Hodell's hardware or
21 was some of it remotely? Do you recall what the setup
22 was like prior to go-live?

23 A. I'm not sure I understand what you're getting at
24 but it's on the real environment, whatever they're going
10:39:16 25 to be going live on, they're on the real environment.

1 Q. Okay. Other than the stress testing we just talked
2 about, at Hodell were there other kinds of testing that
3 were done prior to go-live?

4 A. When you say "Testing," there's -- it's -- there's
10:39:42 5 continual verification, continual training, continual
6 verification. There are long checklists for each
7 application that I've done these functionalities.

8 So yes.

9 Q. So is there -- strike that.

10:40:06 10 In this context, what did the term "Load
11 testing" mean to you?

12 A. Load testing to me would mean the same thing as
13 your stress dress rehearsal; load the system with what
14 you think would be the maximum load in my experience.

10:40:28 15 Q. Meaning being used by all of the employees?

16 A. Yes.

17 Q. Doing their standard work functions?

18 A. Branch stores, included.

19 Q. And does that include all of the customer data, for
10:40:44 20 example, meaning in this example, all of Hodell's
21 customers?

22 A. I would say so.

23 Q. Again, the same time frame, did you know how
24 specifically Hodell planned to use the Business One
10:41:01 25 software?

1 A. Yes.

2 Q. Can you describe how they planned to use it, to
3 your knowledge?

4 A. They used it for all departments of their -- all
10:41:17 5 operations in their business for order entry, accounts
6 receivable, accounts payable, inventory, EEI, warehouse
7 management, integration to warehouse management system.

8 They were already on an LSi product called
9 FACTS, F-A-C-T-S, that had been supported or so LSi, even
10:41:38 10 though they weren't -- they were a Chicago account that I
11 wasn't personally familiar with on FACTS, but they
12 -- they, so we had familiarity of the type of their
13 business, yes.

14 Q. And just so I understand, is it correct to say that
10:41:56 15 you didn't have any personal experience with Hodell-Natco
16 with respect to FACTS system, is that right?

17 A. I -- very, very little. They were an LSi, once LSi
18 bought IBIS, but they were, IBIS was Chicago-supported.
19 I remember a customer in St. Louis supported a number,
10:42:20 20 and I was primarily with St. Louis originally.

21 Q. Okay. So was Hodell-Natco an IBIS customer with
22 respect to FACTS?

23 A. Yes.

24 Q. Okay.

10:43:12 25 Also the same pre-go-live period, the

1 testing you referred to, was it done both at Hodell
2 onsite and remotely through LSi's systems?

3 A. Yes.

4 Q. Meaning some aspects of the pre-go-live work were
10:43:42 5 done actually on Hodell's servers, whereas some were done
6 perhaps on LSi's servers or computers?

7 A. You have a software package that you just load, but
8 any customization is done at LSi, tested before it's then
9 added to Hodell-Natco's environment.

10:44:07 10 So there would be testing at LSi to our
11 satisfaction, and then it would be installed at the
12 customer and testing to their satisfaction in a test
13 environment and then moved to live productions.

14 Q. Okay. And was that process you described followed
10:44:23 15 both pre-go-live and after go-live?

16 A. Yes, yes.

17 Q. Did that process generally change between
18 pre-go-live and post-go-live for Hodell?

19 A. The way you manage changes or -- no. It was same
10:44:49 20 process.

21 Q. In your experience, what happened when Hodell went
22 live with Business One and In-Flight Enterprise?

23 A. It was a continual mode of issues and corrections
24 and patch level updates and contacting as many authority,
10:45:26 25 software authorities, for recommendations and just a

1 myriad of things to try to improve the performance.

2 Q. When did those efforts start?

3 A. I would say immediately.

4 Q. Are you aware that Hodell ever moved off of or
10:45:48 5 stopped using Business One with In-Flight Enterprise?

6 A. I am not.

7 Q. I'm sorry. You're --

8 A. I'm not, no.

9 Q. You're not aware?

10:45:59 10 I believe you said the last time you were
11 involved with Hodell was roughly when LSi closed its SAP
12 practice, is that correct?

13 A. Yes.

14 Q. At that time, did you believe that Hodell should
10:46:31 15 move off of Business One with In-Flight?

16 A. In their judgment, they had an unacceptable
17 environment for taking care of the customer and getting
18 their job done and keeping employees and so on, so yes.

19 And, you know, it would have been -- one
10:47:18 20 thing might have been perhaps upgrade to a larger SAP
21 system, migration in that direction rather than totally
22 different.

23 Q. Like another SAP product?

24 A. Correct.

10:47:29 25 Q. So just to make sure I understand, does that mean

1 that at that time you believed that Hodel1 should leave
2 Business One with In-Flight?

3 A. Yes.

4 Q. Did that opinion ever change between then and now?

5 A. No.

6 Q. Are you aware of any specific issues that were
7 raised with respect to In-Flight Enterprise as opposed to
8 SAP?

9 A. No. I can't cite specific. I just know there were
10:48:14 10 continual issues trying to improve the performance and
11 the, what we all felt was the DI API interface, if you
12 will, for the add-on, not handling the add-on adequately.

13 Q. The DI API not handling the add-on adequately?

14 A. Correct.

10:48:35 15 Q. Was that issue ever resolved?

16 A. Not satisfactorily.

17 Q. Was that issue ever addressed by anyone?

18 A. Yes. It was addressed all the time.

19 Q. By who?

10:48:50 20 A. All of us. SAP. LSi.

21 Q. All of you were addressing the issue of the DI API
22 performance?

23 A. Right.

24 Q. Is that correct?

10:49:00 25 A. Well, trying to do things that would make the

1 performance better any way we could do it.

2 The way you load the form up front, whether
3 you send the transaction one at a time, whether you
4 gather the entire form content and then send it through,
10:49:15 5 I mean it was -- it was continual testing, consulting,
6 advice, changes going on all the time.

7 Q. So correct me if I'm wrong, but my understanding of
8 the DI API is that it's the means through which an add-on
9 communicates with Business One?

10:49:39 10 A. I think that's as good a way to describe it as any.

11 Q. Okay. Would you add anything to that description
12 that I just gave?

13 A. No.

14 Q. So with that understanding, generally speaking,
10:50:03 15 what did LSi do to address issues surrounding the DI API
16 at Hodell?

17 A. I don't know how to answer those specifically. We
18 did hundreds of things in our In-Flight itself, perhaps
19 tried to write it more efficiently, tried to consult with
10:50:19 20 SAP, there was testing overseas. We sent our software
21 out to different labs. We consulted with other known SAP
22 experts in the United States. And nobody seemed to have
23 any solutions for any more than we could come up with our
24 own. I mean, everybody shares information, but no one
10:50:39 25 could point a finger at what's wrong and what you should

1 have done, how it should have been written differently.

2 It was never -- no one ever found that out.

3 It's just like the type wasn't big enough
4 or too slow. That's the only way I can describe it.

10:51:02 5 Q. Let's take a minute. I will say that I'm not going
6 to ask you anything after the page that ended in 810.

7 Let's take a look at the top of this
8 document. You'll see there's a date of December 28th,
9 2007.

10:52:38 10 A. Um-hmm.

11 Q. The second page -- I'm sorry -- the bottom of the
12 first page is the name Sotnick, Michael, as the author of
13 the e-mail.

14 On the next page. Do you know that name?

10:52:56 15 A. Yes.

16 Q. Do you know who that person is?

17 A. Well, I don't know whether president is right
18 title, but he's a high official with SAP.

19 Q. So it appears that the e-mail on the second page is
10:53:09 20 from him to Mr. Lowery?

21 A. Yes.

22 Q. Does that look right?

23 A. That's correct.

24 Q. Do you recall ever seeing this e-mail before?

10:53:16 25 A. Yes.

1 Q. And this, the first -- the second full paragraph at
2 the top of the second page underneath Dan, where it says
3 "When viewed collectively."

4 Do you see that?

10:53:34 5 A. Yes.

6 Q. Okay. After that, it says, "Hodell runs slow
7 because LSi's not properly managed the project."

8 Do you agree at the time this statement was
9 true?

10:53:44 10 A. No.

11 Q. Why not?

12 A. I don't think managing the product is related to
13 the performance issues. We managed the product to
14 development, the In-Flight to run with SAP and did
10:53:59 15 everything collectively with SAP and LSi that we could to
16 improve the performance, and I don't know how you would
17 have managed it any better and differently.

18 There wasn't anybody arguing with anybody
19 in terms of I don't want to do this. Everybody was
10:54:19 20 working together to try to find a solution, so it wasn't
21 a matter that this manager didn't want to do this and
22 this one does. You do everything you could.

23 Q. What about prior to the spring of '06 when you took
24 over the project; was the project managed properly before
10:54:36 25 that?

1 A. Not in terms in my opinion, not in terms of
2 clarifying the specifics of what would be delivered to
3 Hodell.

4 Now, if there was -- it's just like Hodell
10:54:50 5 making the decision that it's okay to go live, they could
6 have said, "No, we don't want to go live" and we could
7 have when we first experienced performance, we could have
8 jumped ship, too, but you don't do that when you have
9 confidence that you're working with a strong partner and
10:55:07 10 you will together find the solution because you usually
11 do.

12 Q. What about the next sentence that says, "LSi failed
13 to test the project before taking the customer live," is
14 that true?

10:55:26 15 A. Well, it's just not true. I don't -- it was a
16 tremendous amount of testing through and going through
17 all functionality, very close working relationship on
18 that.

19 Q. With whom?

10:55:34 20 A. With Hodell.

21 Q. What about the next part, "failed to qualify with
22 SAP in helping Hodell"?

23 A. I can't imagine how anyone could cite an example of
24 that.

10:55:46 25 Q. So there's no examples in your knowledge of that?

1 A. Right.

2 Q. Okay.

3 Below that, there's an underlined phrase,
4 "LSi's failures in testing." Below that, it says,
10:55:59 5 "Number one, March, 2007." It says, "LSi took Hodel
6 live without testing sufficient to reproduce the actual
7 load that would be placed on the system and the live
8 system with all the users."

9 Do you see that?

10:56:15 10 A. Yes.

11 Q. Do you agree that statement was true at the time?

12 A. I would never have -- I would have taken a strong
13 stance of going live if I thought we were not in
14 agreement that we were prepared.

10:56:24 15 Q. So does that mean you --

16 A. I don't agree with their statement.

17 Q. Okay. What does the phrase "Actual load" in that
18 sentence mean to you?

19 A. That would be the stress, dress rehearsal of
10:56:39 20 putting every user on that's going to be using it
21 concurrently, doing the things they do simultaneously,
22 branch stores and everyone. And we did do that more than
23 once.

24 Q. And with the customer's actual live database?

10:56:52 25 A. Yes. Actual live data, no. Well, they were live

1 but with their actual data. Not pretend data. Real
2 data.

3 Q. So like their actual customer data, but a copy of?

4 A. Yes.

10:57:04 5 Q. So that it wouldn't affect --

6 A. Yes.

7 Q. -- their customer information?

8 A. Correct.

9 Q. Going forward?

10:57:12 10 A. Correct.

11 Q. That number two says, "March of 2007, LSi did not
12 put a backup plan in place to revert to customer's Legacy
13 system if the go-live failed."

14 Do you agree with that statement?

10:57:21 15 A. Yes.

16 Q. Is that for the reasons you talked about earlier?

17 A. Right.

18 Q. With respect to the cost?

19 A. But that doesn't mean we wouldn't have -- we
10:57:36 20 wouldn't have continued to stay live at all costs if it
21 were the wrong thing. So when you say you don't have a
22 plan, the plan is you're really okay within the first 24,
23 day and a half, or else you stop right then.

24 Q. This document was marked in a previous Deposition
10:57:55 25 Exhibit 151.

1 A. Okay.

2 Q. Have you ever seen this document before?

3 A. I don't recall it.

4 Q. The -- I guess the substantive e-mail that starts
10:59:42 5 just above midway down says it's from Ashley, Geoffrey.
6 Do you see that?

7 A. Yes.

8 Q. It says it's dated April 17th, 2007?

9 A. Right.

10:59:52 10 Q. Right below that he references a call with Hodell
11 that morning.

12 Do you recall if you were on such a call on
13 that date?

14 A. No, I don't.

11:00:03 15 Q. After reviewing this document, do you recall being
16 on a call, you're all being on a telephone call that
17 might have been this one referenced?

18 A. I don't.

19 Q. So, number one right there, the first numbered
11:00:22 20 paragraph, the second line says, "In revenue, with up to
21 500 users period, there was stunned silence from the SAP
22 team as Hodell confirmed this was their understanding of
23 what was purchased."

24 Do you recall a phone call you were on
11:00:42 25 where anyone at SAP was "Stunned" about Hodell's

1 understanding of what was purchased?

2 A. No.

3 Q. Number two below that says, "Hodell currently has
4 120 users."

11:01:02 5 Does that match your recollection of
6 Hodell's number of users at this time?

7 A. It does because I mentioned I thought they bought
8 another 40 users.

9 Q. Below that there, all the way down to number seven
11:01:16 10 says, "LSi stated that they, (in effect), did not test
11 this environment with anything approaching the number of
12 users, or the load being placed on the system."

13 Does that statement sound correct to you?

14 A. No.

11:01:32 15 Q. Why not?

16 A. I don't think it's -- I don't think it's a true
17 statement.

18 Q. So --

19 A. I don't know why anybody that went through the
11:01:42 20 stress test, anybody that was new at the stress test
21 firsthand would have known that we did a dress rehearsal
22 with the most realistic number of users we could have put
23 together.

24 Q. Then after that, it says, "Jon stated they used
11:01:57 25 around 20 users to test most of it. And most they ever

1 had try and log on was 80."

2 Does this description fit any of the
3 testing that you're aware of?

4 A. Well, up to 80 would.

11:02:14 5 Q. You mean --

6 A. Not the 120. The additional 40 licenses, I don't
7 think there were any stress tests run with any number
8 over 80, and they might not have had that many concurrent
9 users.

11:02:25 10 Q. During the testing?

11 A. Correct.

12 Q. Okay. And I believe you testified about exactly
13 those numbers earlier today?

14 A. Yes.

11:02:36 15 Q. After that it says, "And he also stated that the 80
16 user number did not stress the system as they were not
17 processing orders, payments, et cetera."

18 A. I don't know why it would be said that way.

19 Q. Because?

11:02:50 20 A. Because I feel we did. Because I recollect we did.

21 Q. Meaning you had some number of users actually
22 processing orders?

23 A. Yes, definitely.

24 Q. And making payments?

11:03:02 25 A. Correct. Doing every function that they do.

1 Q. Prior to go-live?

2 A. Yes.

3 Q. With up to 80 users?

4 A. With as many as they would in a normal day. I

11:03:18 5 don't know how many that would be at the moment.

6 Q. Next what's also been marked Exhibit Number 81.

7 Take a minute to review.

8 A. Okay.

9 Q. At the very bottom of the first page, do you see

11:05:00 10 the name Boessmann, Dirk?

11 A. Yes.

12 Q. Do you know that person?

13 A. I know that name.

14 Q. That's someone who works at SAP?

11:05:08 15 A. Yes. I believe he was responsible for the B1

16 product.

17 Q. Okay. And next to that there's a date, 4/16/07,
18 referring to the next page?

19 A. Right.

11:05:20 20 Q. Which looks like an e-mail sent to many people,
21 including yourself?

22 A. Yes.

23 Q. Do you recall getting this e-mail?

24 A. Not specifically, but --

11:05:30 25 Q. Do you recall getting the information that's

1 contained in this e-mail?

2 A. I believe I do.

3 Q. All right. So there it says, "Hi, Dan, in regards
4 to the message we want to deliver to Hodell," do you see
11:05:44 5 that?

6 A. Yes.

7 Q. All right. There's a number two, "What we have
8 found out about Hodell and B1, namely, the transaction
9 volumes of Hodell are pushing the upper limits of B1,
11:05:59 10 which were not thought to be a problem when Hodell
11 purchased B1."

12 Do you see that?

13 A. Yes.

14 Q. At the time, did you believe this was a true
11:06:07 15 statement?

16 A. I -- I don't know what might have been mentioned in
17 the discovery way upfront, in the Hodell discovery in
18 terms of transactions and volume.

19 I think there was -- I think there was
11:06:27 20 reference to volume in Hodell in the upfront discovery
21 way early.

22 Q. So does that mean --

23 A. It's thought not to be a problem when they
24 purchased it. I would say that's a true statement; it
11:06:44 25 was thought not to be a problem when they purchased it.

1 Q. Okay. Does that mean this discovery information
2 may have been exchanged subsequent to the purchase?

3 A. No, before the purchase, but I wasn't -- but it
4 wasn't -- nobody saw it as a problem.

11:06:57 5 Q. Got it.

6 A. Okay.

7 Q. Okay. Next one has also been marked in a prior
8 deposition number 78. I was going to ask you about the
9 first two pages.

11:07:12 10 A. Okay. Okay.

11 Q. About midway down the first page, there's an e-mail
12 from Mr. Lowery to someone named Udi Ziv.

13 Do you see that?

14 A. Yes.

11:08:20 15 Q. Looks like you were cc'd on that e-mail?

16 A. Yes.

17 Q. Do you recall getting that e-mail?

18 A. No. But it looks -- I think I recognize it, you
19 know.

11:08:34 20 Q. So do you recall getting the information in this
21 e-mail?

22 A. Yes.

23 Q. Flip over to the next page, about midway down,
24 looks like this is an e-mail to Mr. Lowery from Mr. Ziv.

11:08:49 25 Looks like you were not copied, underneath "Dan," it

1 says, "As you know, this customer's environment is far
2 outside the Sweet Spot of Business One, (with 120 users,
3 et cetera), and therefore, we anticipate that such
4 performance issues will come up."

11:09:07 5 Do you remember receiving this information?

6 A. Not specifically this e-mail, but I remember
7 starting to get SAP advice that the number of users was
8 an issue.

9 Q. Do you know what the term "Sweet Spot" refers to?

11:09:24 10 A. I guess the place where it has the best
11 performance.

12 Q. Prior to getting this message, were you aware of
13 any issue with the number of users affecting Business One
14 performance?

11:09:54 15 A. I don't know when -- I don't know when the number
16 of users maybe started coming up, whether it was prior or
17 effective with this. I just know eventually it did.

18 Q. Okay.

19 A. And if I may point out just real quick, there's
11:10:12 20 no -- I believe we've identified the issue that may be
21 causing this performance problem, the fix will be
22 included in the April patch.

23 That is so indicative of the hope and the
24 effort that we worked with to go one step further, rather
11:10:27 25 than, you know, abort, or I'm sure Hodell held off filing

1 a suit, and, you know, this is the type of
2 day-in-and-day-out situation you were working with
3 collectively.

4 Q. Meaning that hope was a collective hope?

11:10:47 5 A. Yes. Now, that isn't going to solve going from 120
6 to 500, but if that's where you are -- I don't know what
7 would have happened if it would had been running at
8 perfect performance at a hundred users, but it could go
9 to 200, that still would have been a problem eventually.

11:11:06 10 Even if we would have solved the
11 performance at this level, we'd have, it sounds like from
12 all the information we were getting, that we had the
13 wrong product in at Hodell.

14 We should have been on A1, or All-in-One.

11:11:21 15 Q. Were you part of communications about All-In-One or
16 A1 or Hodell?

17 A. I probably was in on some of the discussion that
18 took place, yes.

19 Q. Do you recall any conclusions that arose out of
11:11:34 20 those discussions?

21 A. No.

22 Q. At that time, did you form belief of whether Hodell
23 should move to the All-In-One?

24 A. I think we thought it would be a better option than
11:11:57 25 going to a different software company, to work within an

1 SAP family product probably would have some advantages,
2 either price-wise or conversion-wise, rather than going
3 to some other system totally.

11:12:19

4 Q. At this time was converting to another SAP product
5 possible for Hodell?

6 A. I don't know what would have been possible, but it
7 wasn't pursued. We didn't put a study on it.

8 Q. Why not?

9 A. I don't know if they wanted to.

11:12:35

10 Q. Okay. The first page of this same document --

11 A. Yes.

12 Q. -- the first subset e-mail at the top says, "Dan,
13 your development team and others."

14 Do you see that?

11:12:50

15 A. Yes.

16 Q. "Have been told that this is outside the Sweet Spot
17 a number of times."

18 Sitting here today, is that statement true?

11:13:04

19 A. I -- I would not agree that our team had been told
20 that a number of times. I don't even know if we were
21 ever told that before going live and getting into -- into
22 more serious conclusion that we were having as much
23 difficulty as we were.

11:13:23

24 It didn't look like we were going to be
25 able to resolve.

1 Q. The very next line down says, "When Hodell was
2 purchased, there was no such definition."

3 Do you see that? Sorry, next line down
4 from the top, starting with "When Hodell purchased"?

11:13:38 5 A. Well, I wouldn't agree with that because of the
6 discovery that we shared from Dale to SAP.

7 Q. Okay. So just to separate for a moment, do you
8 agree that at the time Hodell purchased its licenses,
9 there was no "Sweet Spot" definition for Business One
11:14:08 10 generally?

11 A. I have never heard that term or had any awareness
12 of that discussion of a Sweet Spot.

13 Q. Okay. Again, before this e-mail exchange, do you
14 recall any communications that you received from SAP
11:14:28 15 relating to the number of users for Business One?

16 A. No. Other than it had growth potential.

17 Q. So you received communications from SAP that
18 indicated growth potential for Business One?

19 A. And SAP's own brochures and information on the
11:14:48 20 product that specified that type of growth potential.

21 Q. Okay. So you reviewed SAP brochures like that?

22 A. Yes.

23 Q. Was this before Hodell purchased its licenses?

24 A. Before they bought the system?

11:15:05 25 Q. Yes.

1 A. I wasn't -- probably not me personally.

2 Q. Do you recall where you got those brochures from?

3 A. No, just published information about the system. I
4 don't recall specifically where I got it.

11:15:26 5 Q. Published by whom?

6 A. SAP.

7 Q. Do you recall reviewing information published by
8 anyone beside SAP about Business One?

9 A. No.

11:15:37 10 Q. The next one will be Number 221.

11 A. Okay.

12 Q. The front page at the top, looks like this is an
13 e-mail from you to Mr. Lowery in February of 2008?

14 A. Yes.

11:18:23 15 Q. Do you remember sending him this e-mail, or the
16 information?

17 A. It's familiar, yes.

18 Q. The first line says something about offer comments,
19 some comments to F-R.

11:18:45 20 Do you see that there in the middle?

21 A. Yes.

22 Q. Does F-R refer to Fast Rate?

23 A. Yes.

24 Q. Was that another LSi customer?

11:18:51 25 A. Yes.

1 Q. Was that customer considering installing In-Flight
2 Enterprise?

3 A. Yes.

4 Q. Was this a draft e-mail to that customer?

11:19:13 5 A. I don't know what it is.

6 Q. Okay. Do you recall if you sent any of the
7 information in this e-mail to Fast Rate?

8 A. I don't.

9 Q. You don't recall?

11:19:28 10 A. I don't.

11 Q. Do you recall that you did not communicate?

12 A. I don't recall whether I did or didn't.

13 Q. Okay. About the middle of the page, it's hard to
14 read, but there's a couple of numbered bullet points.

11:19:41 15 There's a number one and a number two below
16 the word "Eventually."

17 A. Yes.

18 Q. Number two, the second line after the two says "For
19 the inherent problem."

11:19:52 20 Do you see that?

21 A. Yes.

22 Q. "As a result of SAP's DI API and all associated
23 remaining -- I'm sorry, restraining obstacles remaining."

24 A. Right.

11:20:02 25 Q. What did that phrase mean specifically, "Associated

1 restraining obstacles"?

2 A. It would mean that there wouldn't be anything that
3 we could do to ultimately provide the resolution working
4 with -- through the DI API, so regardless what we would
5 do.

6 Q. Because of the structure of the DI API?

7 A. Correct.

8 Q. Is that a bug in the DI API?

9 A. I -- I -- just a situation. I don't know if you'd

10 call it a bug or a design or bandwidth or what you want
11 to call it. It just wasn't -- the add-on couldn't handle
12 it with satisfactory performance.

13 Q. That is, the DI API couldn't handle it?

14 A. Correct.

15 It's at the bottom paragraph, if I may,
16 because you mentioned that other letter where it said we
17 only had 20 people to stress test.

18 I wrote here there are several stress tests
19 of 80 or more users performed with the stress test
20 failures related to -- so here again, I don't know why
21 that other document says that I said only 20. That we
22 would have had as many as we could have had users perform
23 stress tests.

24 Q. In that same section, you just noted there's
25 reference to a lockup?

1 A. Yes.

2 Q. What does that mean, a lockup?

3 A. Immediately after we went live, we just started
4 experiencing some lockups and that had to be resolved
5 somehow.

6 Q. What's a lockup in this context?

7 A. Everybody's screens would freeze up. They would be
8 working live and all of a sudden, they would be locked
9 up.

10 Q. Did any of those happen for Hodell before go-live?

11 A. I don't recall specifically.

12 Q. If they did, would that fact alone have been enough
13 to delay Hodell's go-live?

14 A. Yes, I would say so. And if they -- if they -- if
15 we were -- yes.

16 Q. Good afternoon, Mr. Woodrum. It's been a long day,
17 but we met earlier today. I'm Wes Lambert. I represent
18 Hodell-Natco in the lawsuit against SAP.

19 A few follow-up questions from what
20 Mr. Baird was discussing, and then a few other topics
21 that I want to delve into.

22 I think you might have answered this
23 question this morning, but did you have any participation
24 in the upfront sales process to Hodell?

25 A. No.

1 Q. Was the sale cycle already completed by the time
2 you got involved?

3 A. Yes.

11:23:23

4 Q. Did you have any role in determining whether SAP
5 Business One would be a good fit for Hodell?

6 A. No.

7 Q. Did you ever engage in any kind of analysis to
8 determine that after you got involved?

11:23:48

9 A. No. Not an analysis. I made a site visit just to
10 see -- see their operation.

11 Q. Okay. Well, after their involvement, you didn't
12 feel like it was necessary to kind of reassess whether
13 SAP Business One could accommodate Hodell's environment?

11:24:08

14 A. I was not looking at it from that standpoint as
15 much as understanding -- well, I guess in a way, you'd
16 say that's why I was visiting their site, to see what
17 their business was and understand what we had to convert,
18 what business processes we had to bring over to SAP.

11:24:33

19 Q. Was that more a functionality assessment rather
20 than, I guess, more of an assessment of whether the
21 actual software itself could handle --

22 A. Yes.

23 Q. -- the load?

24 A. Yes. That's a good way to put it.

11:24:42

25 Q. Okay. Because it seems to me there's two kind of

1 issues that you were confronted with.

2 At one point, you were concerned with
3 whether LSi was going to be able to develop all the
4 functionality and everything that I guess Dale had
11:24:54 5 promised to Hodell, correct?

6 A. Correct.

7 Q. Okay. And seems to me at some point, that concern
8 was allayed and then it shifted to, well, maybe this
9 software itself isn't capable of actually performing the
11:25:13 10 way Hodell needs it to perform, is that fair?

11 A. I don't think there's any question that the
12 software functionality would perform as Hodell wanted.

13 It was -- there weren't any red flags
14 there. It was just the performance itself that was
11:25:30 15 eventually the problem, but wasn't the functionality.

16 Q. Performance in terms of speed?

17 A. Correct.

18 Q. Okay. And those, the performance issue in terms of
19 the speed was never a concern of yours prior to Hodell
11:25:42 20 going live?

21 A. No, it wasn't. It was -- it was a concern -- it
22 was a topic to be addressed, and we were not seeing the
23 performance we wanted to see.

24 Q. Okay. Was LSi paid for the implementation services
11:26:08 25 it provided to Hodell?

1 A. Yes.

2 Q. That was a separate billable expense?

3 A. Yes.

4 Q. Hodell was relying upon LSi's experience and

11:26:18 5 expertise in kind of guiding them through the

6 implementation process, correct?

7 A. Correct.

8 Q. Do you know if anyone from SAP was directly

9 involved with the pre-go-live testing at Hodell?

11:26:39 10 A. I can't come up with names, and when you say

11 testing, there were several people at SAP involved in

12 things that we were dealing with, and so testing is kind

13 of a broad term of testing.

14 But there were several people involved

11:26:54 15 before we went live with SAP.

16 Q. Okay. Well, let me rephrase it then.

17 LSi was actually the one doing the physical

18 testing, right? But that -- but that information was

19 being communicated or relayed back to persons at --

11:27:11 20 A. Right.

21 Q. -- SAP?

22 A. Correct.

23 Q. Okay. During that testing process, did LSi ensure

24 that SAP was aware of the number of users that were going

11:27:27 25 to be implementing -- or using the software at Hodell

1 after go-live?

2 A. I think there was total awareness of SS -- SAP, the
3 number of users that were involved at Hodell.

4 Q. The same question with regard to transaction
5 volume.

11:27:56

6 Was SAP aware of that information prior to
7 Hodell going live?

8 A. I don't know.

9 Q. What about with the size of Hodell's database?

11:28:04

10 A. Yes, I -- I think they would have been aware of
11 that.

12 I -- I don't at this time that I've thought
13 about it or gone through, I don't know at what times
14 different statistics were discussed with SAP, before or
15 after going live.

11:28:19

16 Q. But SAP -- strike that.

17 Prior to going live, and during the
18 implementation process, did SAP ever express any concern
19 to you about Hodell's environment and whether it would be
20 a fit for SAP Business One?

11:28:43

21 A MALE SPEAKER: Objection.

22 A. I don't recall if they did.

23 Q. Handing you what's been marked as Exhibit 226,
24 would you review that and let me know when you're
25 finished?

11:28:55

1 A. Okay.

2 Q. Exhibit 226 is an e-mail from yourself to Kevin
3 Reidl and copying some others, dated November 26th, 2006.

4 Do you see that at the top?

11:30:20 5 A. Yes.

6 Q. What's being discussed in Exhibit 226?

7 A. Trying to get ready for the go-live and addressing
8 the things that we still need -- addressing things that
9 we still need to address.

11:30:46 10 Q. Okay. You make this statement down at the bottom.

11 "We don't want to go live with an unmanageable system,
12 but I feel we must set our expectations to realize there
13 will be issues noted in going live and as such, we will
14 keep our full team assigned to the product."

11:31:04 15 Do you see that paragraph I'm referencing?

16 A. Yes.

17 Q. What issues are you talking about or referencing in
18 that paragraph?

19 A. Any -- this is an expectation-setting statement
11:31:14 20 more than anything else.

21 I don't think anybody goes live without
22 some issues, and you make a determination of whether
23 they're manageable and whether you can properly run your
24 business. And so you're setting expectations.

11:31:28 25 We set our expectations realizing what the

1 issues are noted in going live.

2 You wouldn't go live if they were show
3 stoppers, but you want them to know that they need to be
4 prepared for some, above and beyond, or even after they
11:31:47 5 go live.

6 Q. Handing you what's been marked as Exhibit 227,
7 would you review that?

8 A. Okay.

9 Q. Exhibit 226 -- 227 is an e-mail from yourself to
11:33:15 10 Kevin Reidl copying others, dated December 20, 2006.

11 Do you recall sending this e-mail?

12 A. Yes.

13 Q. What's being discussed in 227?

14 A. Again this is trying to keep Kevin informed on what
11:33:32 15 we are trying to plan for and what needs to be done
16 between now and then.

17 Q. You make the statement about halfway down, "I think
18 we could -- we could and should plan to go live even when
19 dealing with a less than a what we really need
11:33:48 20 performance if we know that within one to two months of
21 going live, the performance is updated and enhancement
22 can be planned on."

23 Do you see that?

24 A. Yes.

11:34:00 25 Q. What do you mean by that?

1 A. I thought it was reasonable to plan to go live if
2 we agreed it was an acceptable level of performance and
3 we could expect within one or two months that we would
4 have the remaining issues resolved.

11:34:18 5 Q. How -- how are you and Hodell supposed to know
6 whether unresolved issues could be resolved within one to
7 two months of going live?

8 A. Just by evaluating what's going on every day and
9 the progress and the answers you're getting and the
11:34:35 10 results that you're seeing.

11 Q. Okay. The issues that Hodell ultimately did
12 experience upon going live, were those issues identified
13 and acknowledged pre-go-live or were they new issues?

14 A. They had new issues after going live as well.

11:34:50 15 Q. Okay. The issues that I guess were ultimately not
16 resolved to Hodell's satisfaction, were those issues
17 made -- was Hodell made aware of and acknowledged those
18 issues pre-go-live or were those post-go-live issues?

19 A. I -- that category speaks primarily to performance,
11:35:14 20 and so the performance was never resolved.

21 I think anything that was a functionality
22 as far as a fix or an enhancement thing was -- was
23 followed through in a timely basis that could be fixed.

24 Q. Okay. The performance problems, though, which I
11:35:31 25 think there is not an issue in your mind, was the speed,

1 correct?

2 A. Correct.

3 Q. That was never remedied?

4 A. Correct.

11:35:40 5 Q. And was that something that was part of these
6 pre-go live issues that you're discussing in Exhibit 227
7 that you're hopeful would be resolved within one to two
8 months of going live?

9 A. Yes.

11:35:51 10 Q. Okay. Fair to say that Hodell agreed to go live
11 based upon LSi's recommendation that those kinds of
12 issues would be remedied within one or two months of
13 going live?

14 A. They -- I would say they made a decision to go live
11:36:08 15 on an acceptable level of performance with the
16 expectation that they would continue to get better, yes.
17 That the performance would get better with the
18 enhancements and fixes. I don't think they would go
19 live, nor would we let them go live, with an unacceptable
11:36:30 20 performance level so.

21 Q. Were you relying upon any information from SAP
22 during the time of these e-mails in determining whether
23 the testing issues or the pre-go-live issues would be
24 "Manageable"?

11:36:48 25 A. I'm sure I was, and I can't be specific, but I

1 think there are references to an e-mail that's just
2 within a few days after going live that already were sent
3 from SAP was going to fix certain issues.

4 So, yes, there was a constant conversation
11:37:04 5 between us and SAP with patch releases and enhancements
6 and fixes.

7 So I was relying on SAP to continue to
8 assist us either with patch releases or other ways to
9 continue to enhance the system.

11:37:20 10 Q. Are you talking about before going live or after?

11 A. Both.

12 Q. Okay. Kevin asked you some questions about whether
13 you thought you were authorized to speak on behalf of
14 SAP.

11:37:36 15 Do you remember that from earlier today?

16 A. Yes.

17 Q. Okay. Were you authorized to pass on information
18 from SAP to Hodell?

19 A. Yes.

11:38:00 20 Q. Did you rely upon the accuracy of the information
21 that SAP was giving you in providing advice and counsel
22 to Hodell as part of the implementation?

23 A. Yes.

24 Q. Did you rely upon information from SAP regarding
11:38:21 25 Business One's capabilities?

1 A MALE SPEAKER: Objection.

2 A. Yes.

3 Q. Did you rely upon information from SAP as to
4 whether improvements could or would be made into -- into
5 the Business One software?

11:38:34

6 A. Yes.

7 Q. Would you have expected that SAP would have given
8 you accurate and timely information as to their
9 assessment of the Hodell implementation?

11:38:50

10 A MALE SPEAKER: Objection.

11 A. I don't know that I was expecting them to give me
12 an assessment of the implementation so I'm not sure at
13 what point you're referring to.

14 Q. After the go-live date, would you have expected SAP
15 or did you expect SAP to give you accurate and timely
16 information as to whether the implementation could be
17 saved, for lack of a better word?

11:39:03

18 A. I wasn't approaching it at that angle. I was
19 approaching it how to fix the things we needed to fix.

11:39:27

20 Obviously you were trying to save the
21 implementation and go forward but didn't discuss it as
22 being saved as much as being fixed, being resolved and
23 being approved.

24 Q. Okay. Is it fair to say that you were relying and
25 you did rely upon SAP's assessment of whether -- strike

11:39:42

1 that.

2 Fair to say that you were relying upon
3 receiving accurate and timely information as to whether
4 the problems Hodell was experiencing could be fixed?

11:39:56 5 A. Correct.

6 Q. Is it fair to say that SAP knew that you were
7 passing that information along to Hodell?

8 A. Not necessarily the expectation. Just the
9 information of what was taking place. I wouldn't have
11:40:15 10 shared with Hodell necessarily what I was -- my
11 expectations I would be sharing with, I was being told
12 would be forthcoming or perhaps patch level enhancements
13 would correct, things like that.

14 Q. Okay. So without respect to your internal
11:40:33 15 feelings, that's the information you were given, SAP
16 knew -- they would give you information about X, you
17 would be passing that on to Hodell?

18 A MALE SPEAKER: Objection.

19 A. I can't say whether or not. I assume they would.

11:40:53 20 Q. Do you ever recall any concern being expressed by
21 SAP prior to go-live about Hodell's expectations for the
22 software?

23 A. No.

24 Q. You made the statement about how you were at
11:41:09 25 Hodell's facility and you saw someone input a 91-line

1 order that worked fine?

2 A. Yes.

3 Q. And that was just one order that you saw, correct?

4 A. Yes.

11:41:22 5 Q. And Hodell was inputting thousands a day, correct?

6 A. I don't know how many, but yes, that was just one
7 order out of many.

8 Q. Okay. Do you have any reason to doubt the
9 truthfulness of Hodell's, I guess, concerns about whether
10 the software actually performed?

11:41:42

11 A. No.

12 Q. You made the statement that -- you made the
13 statement about how it was challenging with regard to the
14 number of patch levels that came out with regard to
15 Business One.

11:42:10

16 Do you recall that?

17 A. I don't know that I said it was challenging.

18 There were continual patch levels just
19 being looked at for fixes and enhancements.

11:42:23

20 Q. Well, did that present a challenge with regard to
21 either the pre-go-live implementation or the
22 post-go-live?

23 A. It does because you have to first run it through
24 your internal programming setup environment, and then you
25 have to install it, reconcile it.

11:42:39

1 Q. In your experience in the software industry, was
2 the number of patch levels that came out with regard to
3 Business One normal for that time period?

4 A. In my experience, that would not be normal.

11:43:04 5 Q. Would the number of patch levels that came out
6 during the time period that you were involved with the
7 Hodell implementation be indicative of a piece of
8 software that isn't quite ready to be introduced or sold
9 to customers?

11:43:22 10 A. It's indicative of several issues, still in the
11 system, that's for sure.

12 Everybody has different circumstances and
13 they don't always encounter the same problems. So what
14 may work for one company may not work for another.

11:43:40 15 Q. Let me show you a document that's been previously
16 marked as Exhibit 69.

17 I'd like you to review the whole thing
18 beginning from the back, and let me know when you're
19 finished.

11:43:57 20 Exhibit 69 is a series of e-mails, none of
21 which I believe you're copied on, but it begins with an
22 e-mail from Dan Lowery to Udi Ziv and some other people
23 at SAP at the back.

24 A. Yes.

11:44:12 25 Q. Do you know who those individuals are?

1 A. Yes.

2 Q. And Mr. Lowery's asking for some assistance with
3 the Hodell implementation and the problems they're
4 experiencing, correct?

11:44:25 5 A. Correct.

6 Q. Okay. Then on the next page, in the middle,
7 there's an e-mail from Udi Ziv to Dan Kraus and some
8 others?

9 A MALE SPEAKER: What date and time?

11:44:44 10 Q. Dated April 12th, 2007 at 2:59?

11 A. Yes.

12 Q. Do you see the information that -- well, first of
13 all, who is Udi Ziv to your knowledge?

14 A. I don't know his title.

11:44:53 15 Q. Was he -- did you have any communication with him
16 with regard to the Hodell implementation?

17 A. I don't believe I did.

18 Q. What I'm saying is isn't it important, considering
19 the issues Hodell was experiencing with Business One, for
11:45:10 20 them to make a determine -- a determination at the
21 earliest possible point whether they're going to stay
22 with it or move to a different platform?

23 A. If somebody at SAP had gone to them saying this is
24 never going to work, you need to make a different
11:45:29 25 decision, I'm sure they would have made that decision.

1 Q. I hand you what's been marked previously as Exhibit
2 157.

3 A. Okay.

4 Q. Exhibit 157 is a series of e-mails dated April
11:47:17 5 16th, 2007, correct?

6 A. Yes.

7 Q. And it begins at the back of the e-mail from Dan
8 Lowery to Udi Ziv and others, again asking for some help
9 with regard to the Hodell implementation?

11:47:30 10 A. Right.

11 Q. And it involves a series of internal e-mails among
12 SAP employees, correct?

13 A. Yes.

14 Q. And I'll represent that you're not copied on those
11:47:41 15 e-mails, but my question to you is whether that
16 information was imparted to you or made available to you
17 at or around April 16th, 2007?

18 A. I don't recall having the knowledge of the
19 April 16th, at the bottom of the first page, 546. I
11:48:11 20 don't ever remember being aware of something said like
21 Lowery wasn't -- what's it say here? I'm sorry.

22 Oh, I'm not aware that, as we said before,
23 proved by e-mails Lowery knew about this a year ago. I
24 don't recall ever seeing that type of a comment. If I
11:48:42 25 did, I don't recall it.

1 Q. You see the summary, "Hodell just has too much
2 data. SAP Business One cannot handle it and there's no
3 fix in sight. I believe we need to find a way to get the
4 customer off SAP Business One"?

11:49:00 5 A. Yes. I mean, I don't know what the question is.

6 Q. Well, did anyone from SAP tell you on or around
7 April 16th, 2007 that you needed to get Hodell off of
8 Business One?

9 A. I don't believe so.

11:49:18 10 Q. Do you see at the top of that e-mail, there's an
11 e-mail from -- you see at the top of that document,
12 there's an e-mail from Dan Kraus to Ralf Mehnert-Meland?

13 Do you see that?

14 A. On the first page or second page?

11:49:53 15 Q. First page.

16 A. Dan Kraus to -- and it says to -- it's to Dan Kraus
17 from --

18 Q. Oh, from Ralf Mehnert-Meland. I got it reversed.

19 A. Right.

11:49:53 20 Q. And Ralf Mehnert-Meland is making the proposal of
21 rolling Hodell back to their old system, correct?

22 A. It says he did.

23 Q. No one ever communicated that to you, did they?

24 A. I don't ever remember that being a suggestion.

11:50:07 25 Q. Handing you what's been previously marked as

1 Exhibit 158.

2 A. Okay.

3 Q. Sir, 158 is a series of e-mails again that you're
4 not copied on, but they're internal SAP discussions
11:51:07 5 relating to the Hodel implementation, correct?

6 A. Yes.

7 Q. Do you see the -- at the -- at the very top e-of
8 the mail, it's from, again from Ralf Mehnert-Meland to
9 Geoff Ashley, correct?

11:51:20 10 A. Yes.

11 Q. Again he is imparting, after your phone call,
12 "There is no way SAP Business One will work for this
13 customer. We need to find a way to move them on. Plus,
14 Lowery needs to take responsibility for the mis-sell."

11:51:35 15 Do you see that?

16 A. Yes.

17 Q. Was that statement made to you on that phone call?

18 A. I don't think so.

19 Q. Did anyone from SAP tell you on or around

11:51:46 20 April 17th, 2007 again that there was no way Business One
21 will work for this customer?

22 A. I don't believe so.

23 Q. Would you agree that LSi had -- or that Lowery had
24 mis-sold the product?

11:52:11 25 A. No.

1 Q. Why not?

2 A. Ultimately it was not the right product, depends on
3 how you're judging them. The outcome was, yes, it was
4 the wrong product.

11:52:31 5 Q. Handing you what's been marked as Exhibit 159.

6 A. Okay.

7 Q. Exhibit 159, again, it's a series of
8 documents -- or e-mails that I'll represent you were not
9 copied on.

11:53:18 10 A. Correct.

11 Q. Referring to the e-mail at the bottom from Dan
12 Kraus to Geoff Ashley and others, April 17th, 2007 --

13 A. Yes.

14 Q. -- Mr. Kraus states, "There is no go-forward path
11:53:31 15 here with Business One. The partner has
16 clearly" -- strike that. I'll read the whole thing.

17 A MALE SPEAKER: Read it slower so she can
18 take it down.

19 Q. "We very simply need to figure out if there is a
11:53:42 20 solution with A1 with this customer or if we just refund
21 our license fees. There is no go-forward path here with
22 Business One. The partner clearly has misrepresented the
23 solution."

24 Do you see that?

11:53:54 25 A. Yes.

1 Q. Again, do you agree with the statement that the
2 partner has misrepresented the solution?

3 A. No.

4 Q. Were you in communication with Dan Kraus throughout
11:54:05 5 the -- throughout the Hodell implementation?

6 A. Off and on. He is a -- he is in correspondence
7 with Dan. I didn't have much communication with Dan
8 Lowery. I didn't have much communication with Dan Kraus
9 myself.

11:54:21 10 Q. Well, in your communication, did he ever make the
11 statement to the effect that there was no go-forward path
12 with Business One?

13 A. Not that I recollect.

14 Q. And this is barely a month after Hodell went live,
11:54:32 15 correct?

16 A. Correct.

17 Q. And SAP had already made that assessment, correct?
18 And they did not -- they did not communicate it to LSi?

19 A MALE SPEAKER: Objection.

11:54:42 20 A. Not to my recollection. It was -- an absolute
21 statement like that was not conveyed to my recollection.

22 Q. Okay. And Kevin asked you a question earlier today
23 about whether SAP reasonably or unreasonably led Hodell
24 to believe that they could fix the problem after
11:55:04 25 the -- after the go-live date, correct?

1 Do you recall that series of questions?

2 A. Yes.

3 Q. Having seen the three or four e-mails we just
4 looked at, do you have an opinion as to whether SAP
11:55:16 5 reasonably communicated information to LSi and Hodell?

6 A. It's what -- what I see and experience as almost
7 two channels. One is the technical, get it worked, get
8 it fixed, what can we do next patch, and the other one is
9 from the sales standpoint, what has happened, what
11:55:47 10 ultimately might we be up against, shall we be looking at
11 a refund, shall we have a migration?

12 So I just see two efforts going on, two
13 efforts and two conversations going on at the same time.

14 Q. Well, these are technical and salespeople saying
11:56:03 15 this, aren't they?

16 I mean, Ralf Mehnert-Meland was a technical
17 guy at SAP, wasn't he?

18 A MALE SPEAKER: Objection.

19 A. I think he was, but I'm saying we didn't -- we
11:56:15 20 didn't quit in April of '07 trying to make corrections
21 and fixes and enhancements to the system because we were
22 told it would never work.

23 Q. That's my point. Right?

24 A. Right.

11:56:30 25 Q. You and LSi weren't being given a full picture as

1 to what SAP viewed the situation was, were you?

2 A. Not -- not in a definite statement like that, no.

3 Q. And so having had those statements at the time, you
4 could have reassessed where things were going with this
11:56:47 5 implementation, couldn't you?

6 A. We would have stopped and said you need to talk
7 with us with Hodell what the solution or the path was
8 going to be, which we eventually did, of course.

9 Q. Not until months later, correct?

11:57:03 10 A. Correct. But not at this stage.

11 Q. Mr. Woodrum, is there anything that Hodell did or
12 didn't do that would have made this a more successful
13 implementation?

14 A. Not that I'm aware of.

11:57:35 15 Q. There was some testimony about Hodell's
16 infrastructure and hardware, things like that.

17 Do you recall that testimony?

18 A. Yes.

19 Q. Isn't it true that it was really the responsibility
11:57:50 20 of LSi and SAP to let Hodell know what kind of
21 infrastructure they needed to have in order to
22 successfully implement Business One?

23 A. The guidelines for that, yes.

24 Q. Is it fair to say that Hodell was relying upon the
11:58:15 25 advice of SAP and LSi to determine that they had the

1 right hardware and infrastructure?

2 A. Correct.

3 Q. Did they ever fail to -- did Hodell ever fail to
4 make a change to their infrastructure or refuse to
11:58:27 5 purchase something that they needed in order to make the
6 implementation successful?

7 A. Not that I'm aware of.

8 Q. I'm going to hand you, Mr. Woodrum, a copy of
9 Exhibit 21 that's been previously marked.

12:00:00 10 A. Okay.

11 Q. Exhibit 21 is a series of e-mails between folks at
12 Hodell and SAP relating to the Business One
13 implementation, correct?

14 A. Yes.

12:00:17 15 Q. The very -- the e-mail at the top of the first page
16 is an e-mail from Michael Sotnick to Otto Reidl and Kevin
17 Reidl, correct?

18 A. Yes.

19 Q. And it's -- you're copied on that?

12:00:28 20 A. Yes.

21 Q. Dated November 16th, 2007?

22 A. Yes.

23 Q. The second paragraph begins "From the SAP side as
24 relates to the integration points, the acronyms you
12:00:55 25 listed before, we've evaluated the processes and approach

1 and have come to the conclusion there is no change we can
2 make on our side that would result in material
3 improvement."

4 Do you see that?

12:01:04 5 A. Yes.

6 Q. Is this the -- is this the first time you have
7 specific knowledge of anyone at SAP communicating with
8 Hodell that there can't be any improvement in the
9 performance?

12:01:13 10 A. I don't know that for sure, but I would think so
11 because it's stating a conclusion.

12 Q. In other words, you don't -- you don't specifically
13 recall any other conversations in which it would have
14 been stated as unequivocally as it is here that --

15 A. Correct.

16 Q. -- there would not be any material improvements?

17 A. Correct.

18 Q. From your understanding and perception, was all the
19 work that was done by LSi, the programming, the
12:01:42 20 communication of information, was that all in accordance
21 with SAP policies, practices and principles?

22 A MALE SPEAKER: Objection.

23 A. Yes.

24 Q. Did LSi follow industry practices and procedures
12:02:01 25 and standards in the testing that was done before

1 go-live?

2 A. Yes.

3 Q. So it was actually stress testing done of this
4 system before the go-live?

12:02:22 5 A. Yes.

6 Q. And from your perspective, was it an appropriate
7 amount of stress testing done in a proper way?

8 A. Yes.

9 Q. You were also asked about the difference about
10 users and employees a few times?

11 THE COURT: Okay, folks, we'll break for
12 lunch. Meet down -- where do we meet, Mr. Panigutti?

13 THE JURORS: L-1.

14 THE COURT: All right. 1:25. Keep in mind
12:02:52 15 the admonition.

16 A JUROR: Where is your picture at? You
17 have pictures.

18 THE COURT: I do?

19 A JUROR: Oh, yes. On L-1.

12:03:03 20 THE COURT: I do? Probably a long time
21 ago. Yeah.

22 Okay. 1:25.

23 THE CLERK: All rise.

24 (Jury out)

12:04:42 25 (Luncheon recess taken).

1 FRIDAY, JUNE 19, 2015, 1:33 P.M.

2 THE COURT: Good afternoon, ladies and
3 gentlemen.

4 THE JURORS: Good afternoon.

13:35:01 5 THE COURT: All right. You may continue.

6 (Video played as follows:)

7 VIDEO EXAMINATION OF JON WOODRUM (RESUMED)

8 Q. So it was actually stress testing done of this
9 system before the go-live?

13:35:25 10 A. Yes.

11 Q. And from your perspective, was it an appropriate
12 amount of stress testing done in a proper way?

13 A. Yes.

14 Q. You were also asked about the difference between
13:35:39 15 users and employees a few times.

16 In terms of performance of this software,
17 what is the significance of the number of users versus
18 the number of employees?

19 A MALE SPEAKER: Objection.

13:35:52 20 A. I think that it's fair to assume that when you talk
21 about employees, this company has a hundred employees or
22 this company has 200 employees, that you're also talking
23 that you could potentially use the system.

24 So it's -- they're somewhat the same.

13:36:14 25 Q. With respect to Business One, would you expect SAP

1 to know whether or not Business One would work for any
2 potential customer?

3 A MALE SPEAKER: Objection.

4 A. Yes. Based on the information given to him about
13:36:49 5 the customer.

6 Q. Okay. And does that mean that if SAP had
7 information about a specific customer, SAP should have
8 been able to determine whether Business One could work
9 for that customer?

13:37:01 10 A. Yes.

11 Q. Okay. What about without specific information
12 about that customer?

13 A. No.

14 Q. So it's only through specific information for a
13:35:50 15 particular customer that you would expect SAP to be able
16 to evaluate whether Business One would work for that
17 customer?

18 A. I -- yes. I don't think SAP would partner a sale;
19 I mean, deal with a sale from an LSi partner without
13:36:10 20 knowing the customer.

21 Q. Okay. So in your experience, SAP didn't permit a
22 sale by SAP without SAP knowing about the customer?

23 A. I would think they would always have knowledge of
24 those prospects and the type of customer, yes.

13:36:25 25 Q. You were also asked about infrastructure and other

1 requirements that are communicated by SAP with respect to
2 Business One.

3 Do those requirements or recommendations
4 cover things like servers?

13:36:47 5 A. I believe so. Sizing requirements, strength.

6 Q. Do you recall where you got those kinds of
7 requirements or recommendations?

8 A. I do not.

9 Q. Was it through SAP?

13:37:08 10 A. Yes.

11 MS. LUARDE: That's it.

12 THE COURT: Do you have some, too?

13 MR. MILLER: We do, Your Honor.

14 MR. STAR: Your Honor, could we just
15 approach real quick?

16 THE COURT: Sure.

17 (Side-bar conference had off the record).

18 MR. STAR: Your Honor, we have binders for
19 the exhibits that are being shown.

13:42:06 20 THE COURT: Ready? Okay.

21 (Video played as follows:)

22 Q. More than common, for example, prevalent or --

23 A. I would say it was prevalent once it became an
24 online interactive real-time software became, you know,
13:42:24 25 almost it became very common place, the parallel.

1 I don't know if others did it that I'm not
2 aware of it, but I never saw it.

3 Q. Considering Hodell's maintenance of their Legacy
4 system that you just described, could Hodell ever have
13:42:43 5 gone back full-time to their old system?

6 A. Technically probably.

7 Q. When you say "Technically," what does that mean?

8 A. It's still operational. You would have to convert
9 the data already keyed in, but they wouldn't have lost
13:43:06 10 their software for that.

11 Q. Did anyone from Hodell indicate that that order of
12 performance was not acceptable?

13 A. No.

14 Q. Either from your own firsthand experience or that
13:43:21 15 of others, were you aware of any changes up or down in
16 the performance of the software at Hodell after go-live?

17 A. There were -- yes, there were changes,
18 improvements, as time went on.

19 My son worked for LSi, and he specifically
13:43:43 20 was involved in some of the testing before and after with
21 specific patch level released, and I remember one area
22 that we were concentrating on, went from like 19 seconds
23 to two or three seconds, and there -- there
24 were -- there -- there was improvement in some areas
13:44:03 25 addressed, recognized.

1 Q. And were some of the performance improvements at
2 Hodell the result of SAP patch levels?

3 A. Yes.

4 Q. But you didn't believe that you had some sort of
13:44:19 5 employee or employer relationship with SAP?

6 A. Not at all.

7 Q. Okay. Did you believe that you were authorized to
8 act on behalf of SAP?

9 A. No.

13:44:47 10 Q. Or speak on behalf of SAP?

11 A. Only if documenting or conveying.

12 Q. You mean passing on information from SAP?

13 A. Correct. Correct.

14 Q. To your knowledge did you say anything to Hodell)
13:45:03 15 for the purpose of leading Hodell to believe that you
16 spoke for SAP?

17 A. I try not to say any -- I try to set the proper
18 expectations. I would try -- I would say things that I
19 felt confident could be delivered, whether it was coming
13:45:26 20 from SAP. I wouldn't speak on behalf of SAP saying, "I'm
21 sure," I wouldn't speak on behalf of SAP without
22 knowledge that it's SAP-sanctioned, if you want to use
23 that word.

24 Q. Do you know if anyone at Hodell believed you to be
13:46:17 25 an employee of SAP?

1 A. I don't believe they did.

2 Q. No one expressed that to you?

3 A. No.

4 Q. I believe you said you were not involved with the
13:46:17 5 sales process of Business One to Hodell, is that correct?

6 A. Correct.

7 Q. Prior to go-live at Hodell, were you personally
8 aware of how many users Hodell was licensed to use?

9 A. Yes.

13:46:21 10 Q. What was that number?

11 A. Eighty.

12 Q. Did that number change ever? I'll rephrase.

13 Did they ever add more than 80?

14 A. It seems like they might have bought 40 more users
13:46:41 15 after, at some point in time, not before go-live but
16 because of the pricing or the offer, I don't know. I
17 don't think the actual number of users went up
18 necessarily, but they may have bought more licenses.

19 Q. Okay.

13:46:57 20 So prior to go-live, were you aware of how
21 many concurrent users Hodell planned to use?

22 A. It probably was with 80 being licenses available to
23 them.

24 I don't know how many users they had. I
13:47:11 25 don't know if they had 76 users or 80.

1 Q. Okay. But you knew they had 80 licenses?

2 A. Yes.

3 Q. Okay. And you didn't know whether they would be
4 using all of those or not?

13:47:21 5 A. Correct.

6 Q. Did anyone at Hodell speak with you about this
7 lawsuit before filing it?

8 A. Not too long after we went live, within a month
9 perhaps, I believe Kevin made me aware or I was aware
13:47:46 10 somehow that he thought that he was going to recommend to
11 his father that they file suit.

12 Q. What was your reaction to that information?

13 A. I can understand where he was coming from; at the
14 same time, June of that year -- we went live in March.
13:48:14 15 June of that year, Otto was saying that they had had lots
16 more customers. I think they had the most phenomenal
17 month of May that they had ever experienced, and that was
18 encouraging, not talking lawsuit at all, but Kevin went
19 on record that I think we ought to file suit, that he was
13:48:38 20 going to tell his dad that.

21 Q. That communication from Otto in June, was that by
22 e-mail?

23 A. Yes.

24 Q. I'll show you a series of documents. Every time I
13:48:50 25 hand you one, please feel free to take your time to

1 review. It's not a memory test.

2 The first one we'll mark as Exhibit 214,
3 and I've got a copy here for you, copies for you guys.
4 And feel free to take a few minutes and just look up when
13:49:11 5 you're done.

6 So back to the first page. Do you see the
7 second line says, "Sender" and then has your name?

8 Do you see that there?

9 A. Yes.

13:49:35 10 Q. Do you recall from your own memory
11 writing/receiving e-mails in this chain?

12 A. Yes, I do.

13 Q. Would you turn to the second page? About
14 two-thirds of the way down, the paragraph that starts
13:49:56 15 "However."

16 Do you see that?

17 A. Yes.

18 Q. I'll just read a little bit there. "However, we're
19 all -- I think we are taking on more than we can possibly
13:50:07 20 dream of completing in a five-year window."

21 What did you mean there?

22 A. I thought the scope was too broad and needed to be
23 more definitive.

24 There was, for example, reference to
13:50:28 25 inventory projection with A & M philosophy, Texas A & M.

1 I don't know if you know about Texas A & M, but I am a
2 person that likes to be definitive. It was too broad.

3 Q. When you say the scope was too broad do you mean
4 the functions that would be included or more than that?

13:50:50 5 A. Just the quantity, the size of the overall project.

6 Q. And this project specifically was In-Flight
7 Enterprise, is that correct?

8 A. Yes.

9 Q. A little bit lower down in that paragraph midway
13:51:08 10 through the second-last line it says "I think this is too
11 much for LSi/IBIS to take on. It's more than SAP is
12 taking on."

13 What prompted you to express those
14 comments?

13:51:25 15 A. I was just giving my opinion of what I thought was
16 a realistic project in the time frame we wanted to do it.

17 Q. And what was that time frame at this point?

18 A. I'm not sure what the original one was, but I
19 recall wanting to be live maybe even in 2006 sometime.

13:51:48 20 Q. And around the middle of the page, you see that
21 this is dated May 9th, 2005?

22 A. Right.

23 Q. Up to this point, what had your involvement with
24 In-Flight Enterprise been to date?

13:52:08 25 A. I actually tried to distance myself from the

1 project with Dale in terms of being responsible for it.

2 I am glad I was, I would help, and I would
3 give my comments, and I worked for LSi, but I was not
4 comfortable with the scope of the original project, the
13:52:43 5 promises.

6 Q. And the scope of the promises, where were those
7 communicated to you?

8 A. In a roadmap of what the In-Flight package would
9 entail.

13:52:58 10 Q. Is that roadmap a document?

11 A. Yes.

12 Q. Was that document shared with Hodel?

13 A. Yes.

14 Q. This issue you present here, was it ever addressed?

13:53:21 15 A. I ended up having to take over the project and so
16 in early 2006, March, April time frame, it was addressed
17 and I did pare it down to what I thought we could
18 accomplish and copied Dan Lowery and that's when we
19 embarked on our In-Flight version.

13:53:46 20 Q. Was it addressed before that time, before you took
21 over?

22 A. I don't believe so.

23 Q. After you took over the efforts you just mentioned,
24 were they documented?

13:54:04 25 A. After we took over was the project documented?

1 Q. Yes.

2 A. Yes.

3 Q. Was that documentation exchanged with Hodell?

4 A. Yes.

13:54:16 5 Q. Did Hodell give you feedback on that documentation?

6 A. Yes.

7 Q. And what was that feedback?

8 A. Some of it was what we were told or we were
9 expecting. It was friendly, but it was just setting the

13:54:34 10 expectations to be realistic so we could both be
11 satisfied with the end results and would maybe wanted
12 more or thought there should have been more, and we also
13 realized that as with FACTS, In-Flight, there was always
14 evolution of product. It was always growing.

13:54:56 15 So I think they appreciated and respected
16 the fact we stepped forward and quantified that.

17 Q. When you say the product, do you mean specifically
18 In-Flight Enterprise or Business One or both?

19 A. Just In-Flight.

13:55:20 20 Q. And the process you just described, is that one of
21 the reasons why you wanted to document the scope of the
22 project more specifically?

23 A. Just I don't know how to work else -- anyway
24 else -- any other way. When you have people working
13:55:36 25 toward the same end result, they have to know what it is.

1 Q. And by that, you mean both Hodell and the folks at
2 LSi?

3 A. Right.

4 Q. Who were actually working on the project?

13:55:50 5 A. Correct.

6 Q. Just the next page at the very top, there's number
7 one, number two, first full line begins "We're taking on
8 more than SAP is. I don't see how we can afford a source
9 that large of an expectation."

13:56:14 10 What did you mean here in terms of
11 expectation?

12 A. At this moment I don't know what that would mean
13 saying "we're taking on more than SAP is."

14 I think I meant we're putting more into
13:56:30 15 the -- we're putting more cost in our own -- our own
16 development time and cost in the project than SAP is.

17 Q. By cost --

18 A. The development cost.

19 Q. You mean both financially and resource-wise?

13:56:44 20 A. Correct.

21 Q. That's all for this one. You can set that aside.

22 Here I've got copies of an exhibit that's
23 already been marked, Exhibit Number 139. I apologize.

24 Your copies do not have the exhibit number. I'll

13:57:10 25 represent that it's Exhibit 139.

1 If you could just take a few moments to
2 review that.

3 A. Okay.

4 Q. Let's take a look at the second page about
13:57:27 5 one-fourth of the way down, there are two lines together
6 that start, "We need up."

7 Do you see those lines? Can you read those
8 two lines for me?

9 A. "We need a checklist, so to speak, for
13:57:45 10 Hodell-Natco to sign off on now, and when we deliver, we
11 need a checklist for developers to monitor their
12 progress."

13 Q. And what did you mean by checklist here?

14 A. I felt we needed a definitive checklist that was
13:57:57 15 more than verbal conversation and locked up screens and
16 things that didn't have any support behind them to
17 deliver a definitive plan in place to deliver.

18 Q. So would that be a different -- would that be a
19 document distinct from the roadmap you referred to
13:58:23 20 earlier?

21 A. It ended up being the roadmap with a little tighter
22 definition and inclusions and exclusions of what would be
23 included.

24 Q. So a checklist was eventually developed?

13:58:37 25 A. The -- the roadmap was highlighted and identified

1 as to what would be developed, and -- and then
2 specifications and checklists of, yeah, that was our
3 checklist, I would say, the roadmap.

13:58:54

4 Q. And was that developed after you took over, so to
5 speak?

6 A. Yes. We pared it down to what we thought we could
7 realistically accomplish and I -- yes.

8 Q. Was that kind of document also used internally for
9 LSi developers?

13:59:09

10 A. Yes.

11 Q. And by them?

12 A. Right.

13 Q. Further down about halfway down there's a line that
14 says, "I would not sign off without specs if I were HN,"
15 do you see that?

13:59:25

16 A. Um-hmm.

17 Q. What did you mean?

18 A. I was very uncomfortable receiving milestone
19 payments for something that was not defined better, with
20 a better understanding of what the deliverable would be.

13:59:39

21 Q. On the front, the back of the first page, do you
22 see the date near the top of the first page? It's May
23 16th, 2005 from you to Avery Myrick?

24 A. Myrick.

14:00:01

25 Q. Myrick at LSi. With a note, "Here's the response I

1 gave to Dan."

2 Why did you send it to Mr. Myrick?

3 A. Avery was another partner in the company and Avery
4 was vice president of technical services and more
14:00:20 5 technical expertise than I, and I wanted to share with
6 him my thoughts, my opinion.

7 Q. Other than this e-mail, did you discuss that
8 opinion with him?

9 A. I'm sure I did.

14:00:31 10 Q. Are you aware if he shared any of your concerns on
11 this issue?

12 I'm going to show you the next document
13 which was previously marked as Exhibit 142. Copies.

14 Okay. First, the top of the first page, it
14:01:00 15 appears that your name's not on this e-mail, is that
16 correct?

17 A. Yes.

18 Q. But it's dated 2/27/06, and the second page shows
19 an e-mail that looks like you sent to Mr. Lowery, is that
14:01:16 20 correct?

21 A. Yes.

22 Q. Do you recall sending this e-mail on the second
23 page?

24 A. Yes.

14:01:25 25 Q. Do you recall if you received the e-mail on the

1 first page?

2 A. I don't recall.

3 Q. Okay. You see down where it says "Jon, thanks for
4 your e-mail," below that it says "I spoke to Dale this
14:01:44 5 morning"?

6 From reviewing this document today, do you
7 know which Dale that refers to?

8 A. Dale Van Leeuwen.

9 Q. Below that, Exhibit 1, it says, "SAP speed: He has
14:02:00 10 calls in to Ralf and will dog him for further info."

11 Do you know what that means?

12 A. Trying to improve the performance. Ralf is an SAP
13 person.

14 Q. Have you ever spoken with that person?

14:02:23 15 A. I think I would have.

16 Q. But you don't recall specifically?

17 A. Correct.

18 Q. The term "SAP speed," do you know specifically what
19 that refers to?

14:02:24 20 A. Performance.

21 Q. Of what?

22 A. Returning response time to a transaction.

23 Q. Meaning? Through both Business One and In-Flight
24 Enterprise?

14:02:37 25 A. I would say so.

1 Q. Down below that, there's a number 4, about midway
2 down where it says "Citrix on Hodell."

3 Are you aware of whether Hodell used Citrix
4 in relation to its use of Business One and In-Flight
14:02:58 5 Enterprise?

6 A. Yes.

7 Q. Are you personally aware of any problems that
8 Hodell had with Citrix surrounding this limitation?

9 A. Yes.

14:03:07 10 Q. Were you personally involved with addressing any of
11 those issues?

12 A. Just being aware of anything we were working on at
13 some angle.

14 Q. Sitting here today, do you have an understanding of
14:03:20 15 what any of those Citrix issues were?

16 A. No.

17 Q. Number five below that, the second line, about
18 midway through the second line says, "It sounded
19 remorseful almost that he had blew up so badly."

14:03:45 20 I believe this refers to Dale?

21 A. Yes.

22 Q. Do you know what this -- what circumstance this
23 refers to?

24 A. Previous e-mail that he'd had with Dan and his
14:04:01 25 reasons for departing.

1 Q. Do you know what Dale's were?

2 A. I actually don't.

3 Q. The next page about midway through, after the words
4 "So," down below that, there's a line that begins "I
14:04:29 5 don't want to take ownership of this project."

6 Do you see that?

7 A. Yes.

8 Q. It goes on to say, "In the customer's eyes because,
9 for one, I couldn't look them in the eye or even talk to
14:04:39 10 them on the phone about this project."

11 What did that mean?

12 A. I felt like we weren't being totally upfront with
13 the status of the project with them as to whether it
14 really was a tangible product.

14:04:56 15 Q. Is that the same issue you and I discussed a few
16 minutes ago?

17 A. Yes.

18 Q. In relation to the development, the milestones of
19 the project, and how it was communicated to and with
14:05:07 20 Hodell?

21 A. Yes.

22 Q. Down below that, it says, the second-to-last
23 paragraph says, "And who takes over the management of the
24 project," is there a chance Dale would possibly do this
14:05:24 25 as a consultant?

1 I believe you said earlier that you
2 eventually took over the project?

3 A. Yes.

4 Q. Earlier you mentioned some e-mails of, correct me
14:05:44 5 if I'm wrong, Mr. Lowery ignoring your comments that you
6 didn't want to take over the project until it was more
7 specifically defined. Is this em-mail an example of one
8 of those occasions?

9 A. Yes.

14:06:04 10 Thanks.

11 Q. Next one we will mark as Exhibit Number 217 -- is
12 it 216? Okay.

13 First, have you ever seen this document
14 before?

14:06:26 15 A. I think so.

16 Q. At the top, just below the title it says "Project
17 status meeting, Tuesday, March 14th, 2006."

18 Do you recall a meeting around that time?

19 A. Yes.

14:06:39 20 Q. That you were present at?

21 A. Yes.

22 Q. It says, below that, it says "Prepared by Jon R.
23 Bilas?"

24 A. Bilas.

14:06:50 25 Q. Bilas? Who is that?

1 A. Dale had given his notice that he wasn't staying
2 beyond May of 2006 and so we thought we would try to
3 bring somebody in to replace Dale.

4 And this is the person that came in and it
14:07:06 5 didn't work out with him, but he was new right there, and
6 he sat in on this meeting that I had to go up and review
7 the status of the project.

8 Q. So the purpose of the meeting was for you to review
9 the status of the project?

14:07:19 10 A. Right. He sat in that as a new person.

11 Q. Was he an employee at this point?

12 A. Yes. Could be -- I think so. He might not have
13 been. I recollect maybe I had him come in and sit in on
14 this before he even started just because I wanted him to
14:07:39 15 hear it.

16 Q. Was he an employee at some point?

17 A. Yes.

18 Q. Below that there's a list that says attended by and
19 several names, including yours.

14:07:47 20 Was Mr. Lowery at this meeting?

21 A. No.

22 Q. Do you know why not?

23 A. I don't.

24 Q. Would you say that was common for meetings of this
14:08:02 25 type?

1 A. Yes.

2 Q. Below that, next paragraph it says "Let me be
3 clear, SAP has taken extraordinary measures to make this
4 project work for the customer."

14:08:15 5 At the time, would you agree that that
6 statement is true?

7 A. Yes.

8 Q. Did your belief in that statement ever change?

9 A. No. They had a number of people that tried very
14:08:27 10 hard.

11 Q. SAP?

12 A. Yes.

13 Q. I believe you mentioned some specific names earlier
14 about people from SAP who were involved?

14:08:39 15 A. Right, but there were -- there were at least a half
16 a dozen. I can't -- I mentioned Eddy Neveux. That's
17 just a name that came to mind in the States, but there
18 were other people in different areas, and different labs,
19 and different positions that tried to help.

14:08:57 20 Q. At SAP?

21 A. Yes, at SAP and other companies. We went out to
22 other companies.

23 Apollo was the name of one of them that SAP
24 looked at them as experts with the code, and Vision 33
14:09:11 25 were considered experts with the code. We consulted

1 collectively with those people.

2 Q. In this document, there's discussion about
3 In-Flight Enterprise, including the characterization of
4 that software as a large application. Would you agree
14:09:29 5 with that?

6 A. Yes.

7 Q. Would you agree that it was a complicated
8 application?

9 A. Yes.

14:09:43 10 Q. Would you agree that Hodell's specific networking
11 structure contributed to some of the problems it had?

12 A. Yes.

13 Q. Including server -- servers which we discussed
14 earlier?

14:10:02 15 A. (Nods affirmatively.)

16 Q. Yes?

17 A. Yes. I'm sorry. Yes.

18 Q. Okay. What about network connections?

19 A. Over a period of time, different things would be
14:10:39 20 reviewed, different specialists would be brought in or
21 review something and there, whether it was networking on
22 Citrix or servers, sometimes there would be adjustments
23 or improvements made in that area.

24 Hodell lost their IT person about the same
14:10:39 25 time, I believe, that we signed off on the deal. So they

1 started with a brand new person and it's -- there was
2 just many things, change over the period of -- over the
3 project timeline to improve things.

14:10:50

4 Q. At the time, did you believe that it was oversold
5 to Hodell?

6 A. When it was sold?

7 Q. Yes.

8 A. No.

14:10:57

9 Q. The performance level upon which Hodell was basing
10 its go-live determination, is that the same performance
11 level they actually experienced upon going live, or was
12 the post-go-live performance level worse?

13 A. I don't know. Probably similar. Probably close to
14 the same.

14:11:14

15 Q. The decision when to go live, is that a joint
16 decision of you, Hodell and SAP?

17 A. Not SAP.

18 LSi and Hodell, right.

14:11:30

19 Q. I'll rephrase. You weren't involved in the sale of
20 Business One or In-Flight to Hodell, correct?

21 A. Correct.

22 Q. So if any misrepresentations were made to Hodell
23 during the sales process, you wouldn't necessarily be
24 aware of those, correct?

14:11:41

25 A. Correct.

1 Q. But do you have specific knowledge of that?

2 A. No.

3 Q. Okay. That's all I have. Thank you very much.

4 (End of video)

14:12:06 5 THE COURT: Okay. You may call your next
6 witness.

7 MR. LAMBERT: Your Honor, we call Jaime
8 Clarke.

9 MR. STAR: Your Honor, we would just
14:12:08 10 collect the binders from the jury.

11 THE COURT: Sure.

12 Sir, would you raise your right hand for
13 me?

14 JAIME CLARKE,
15 of lawful age, a witness called by the PLAINTIFFS,
16 being first duly sworn, was examined
17 and testified as follows:

18 THE COURT: Please have a seat.

19 Can you tell us your full name and spell
14:13:18 20 your last name?

21 THE WITNESS: My name's Jaime Clarke, last
22 name is C-L-A-R-K-E.

23 THE COURT: Thank you.

24

14:13:18 25

1 DIRECT EXAMINATION OF JAIME CLARKE

2 BY MR. LAMBERT:

3 Q. Good afternoon, Mr. Clarke. I'm over here. You
4 can look in whichever direction you want.

14:13:21 5 But can you tell the jury about yourself?

6 A. Sure.

7 Again I'm Jaime Clarke. Work at
8 Hodell-Natco. I've worked there for 25 years now. Live
9 in Brecksville, Ohio. I have six kids, three dogs, and a
14:13:39 10 mother that lives with us. So that's -- that's pretty
11 much it.

12 Q. And how long have you lived in Brecksville?

13 A. We've been in Brecksville for about five years now.
14 Prior to that, we lived in Garfield Heights. Prior to
14:13:54 15 that, I grew up, I started in Brecksville, and then now
16 we're back.

17 Q. Where did you attend high school?

18 A. I went to Walsh Jesuit high school.

19 Q. What did you do after high school?

14:14:05 20 A. I spent two years at Kent State, and during that
21 time, I also worked at a lumberyard, garden center in
22 independence.

23 Q. Did you get a degree from Kent State?

24 A. I did not.

14:14:19 25 I dropped out after two years working at a

1 lumberyard making eight dollars an hour, was all I needed
2 to do at that time so.

3 Q. So what did you do after Kent State?

4 A. After Kent, that same year I was laid off from
14:14:36 5 the -- my job at Big 4 Lumber in November, right around
6 Thanksgiving, and I spent January -- or December looking
7 for a job and started at Hodell in January of 1990.

8 Q. And are you still with Hodell now?

9 A. I am.

14:14:53 10 Q. What's your current job title at Hodell?

11 A. I am now a business development manager.

12 Q. And what's that mean? What do you -- what do you
13 do?

14 A. I go out and look for large, new opportunities for
14:15:09 15 new customers building long-term relationships, trying to
16 supply, you know, fasteners, chain and hardware to
17 manufacturers in Ohio, Pennsylvania.

18 Q. And how long have you been in that position?

19 A. It will be going on three years now.

14:15:33 20 Q. So how long have you been employed with Hodell in
21 total?

22 A. A little over 25 years now.

23 Q. What do you think of Hodell as a company?

24 A. Well, 25 years, I mean, it's a good company. I
14:15:45 25 like working there.

1 You know, some of the things, it's a family
2 atmosphere. I've obviously grown up, it's a family-run
3 business and so I've grown up with the family, grown up
4 with the people I work with.

14:15:57 5 It's a great atmosphere to work in, you
6 know. We're a good company. Love being there. Lot of
7 people that I work with have as much if not more tenure
8 than I have. They helped me through some personal times,
9 so I like it.

14:16:20 10 Q. To your knowledge, how does Hodell sell itself to
11 customers or differentiate itself from other companies
12 that might do the same thing?

13 A. A lot of people do what we do, but, you know,
14 service, service is one of the most important things that
14:16:46 15 we can provide to our customers.

16 You know, a fastener, a quarter inch hex
17 nut is a quarter inch hex nut, you know, and it's what we
18 do, the service we can provide, the expertise that we
19 bring that makes us different than, you know, anyone else
14:16:54 20 who does what we do.

21 Q. Can you just describe for the jury what Hodell
22 does, what its business is?

23 A. We're a master distributor or a hardware
24 wholesaler. So we buy fasteners, nuts, bolts, screws,
14:17:12 25 chain.

1 We package them in little boxes and resell
2 them to hardware store, industrial distributor, a farm
3 supply store, to large manufacturers across the U.S.

14:17:34

4 Q. You mentioned at the beginning you were a business
5 development manager, is that right?

6 A. Yes. I currently am.

7 Q. Have you had other job titles at Hodell in your 25
8 years there?

9 A. Yes.

14:17:42

10 I started --

11 Q. If you want to just go through them sequentially.

12 A. Yeah, quick progression.

13 I started in January, 1990, I was a
14 shipping and receiving guy working in the warehouse.

14:17:56

15 About a year after that, I moved into
16 sales.

17 You know, different sales roles, product
18 manager, purchasing sales of certain product lines.

14:18:09

19 At one point for several years, six to
20 eight years, I was a sales manager for our Cleveland
21 office. Senior account manager for a while. And now I'm
22 a business development manager.

23 Q. The shipping and receiving position you held, when
24 was that again?

14:18:22

25 A. That would have been for roughly the first year, a

1 little less than a year.

2 Q. And what did you do? What were your
3 responsibilities in that position?

4 A. I worked in the warehouse. We took, you know,
14:18:36 5 boxes of -- small boxes of fasteners, put them in bigger
6 boxes and shipped them via UPS or a truck line to
7 customers, you know, all over the area.

8 Working on building materials and, you
9 know, general warehouse responsibilities. Order
14:18:56 10 fulfilling, order pulling, that type of thing.

11 Q. And what was the next position you had?

12 A. I went into inside sales.

13 Q. And what did you do as an inside salesman?

14 A. You know, as inside sales, we obviously work
14:19:10 15 directly with the customers. We entered orders, answered
16 phones, worked on quotes, sourced out product, and tried
17 to fulfill whatever the requirements of our customers
18 were.

19 Q. And I think you said you transitioned into a role
14:19:23 20 as a product manager and then into general sales?

21 A. Yeah. I mean, we had a division, a Lok-Tooth
22 division, and I got to kind of manage that product line
23 and buy and sell it, and it was a, you know, a great
24 product that we were able to grow over those years.

14:19:41 25 After that, I just worked in sales in

1 general across the board and then into sales management.

2 Q. And what did you do in sales management?

3 A. I can't tell you the day, I mean it was probably
4 2002, 2003, I took on the sales manager responsibility
14:20:02 5 for our Cleveland office.

6 I managed inside sales team, outside sales
7 reps for six to eight years.

8 Q. You mentioned outside sales reps.

9 What was their role?

14:20:19 10 A. We had, I don't know, maybe six rep agencies across
11 the country that sold products for Hodell-Natco so they
12 would go into, you know, a prospect, a customer, hand out
13 some materials, some literature, you know, hey, if you
14 need these, call Hodell-Natco.

14:20:41 15 And once that relationship was established
16 through those outside reps, our inside team would manage
17 that account directly with the customer.

18 Q. Did those outside sales reps have to describe the
19 products Hodell sold and what they were to the potential
14:20:59 20 customer?

21 A. Yeah, I mean, you know, they'd hand out a catalog.
22 We may give them a price to say, hey, you know when you
23 talk to Bob, here's Bob's price on flat washers or
24 whatever it might have been, so yes.

14:21:14 25 Q. And did Hodell stand behind what those outside reps

1 sold or told to potential customers?

2 A. Yeah. If -- if, you know, if a sales rep committed
3 to a price or availability or lead times, you know,
4 whatever it might have been, that was our responsibility
14:21:31 5 to support that.

6 Q. Going back to your role in the sales department at
7 Hodell, can you just tell the jury how many customer
8 orders Hodell takes on a daily basis?

9 A. There's -- I'd say we do 20 to 50 orders a day in
14:21:54 10 Cleveland.

11 Q. So that's just in the Cleveland office?

12 A. Yes.

13 Q. Can you describe for the jury generally how
14 customer orders are taken in?

14:22:04 15 A. I mean, there's several ways, right?

16 So we -- we can take an order off the
17 phone. I guess as time has gone by, it's changed, right,
18 so way back when you took orders off the phone, came over
19 the fax machine, the paper would all curl up.

14:22:21 20 And then, you know, as it went on, now we
21 get more e-mail orders, but, you know, so phone, fax,
22 e-mail, mail.

23 Q. How do they get entered into the system? Who does
24 that and how do they do it?

14:22:37 25 A. So I mean we have inside salespeople so the

1 salespeople are going to be responsible for entering the
2 orders, either, you know, on the phone. You know,
3 somebody's telling you, "We need to -- some items." And
4 you can enter it from the phone talking to the customer
14:22:55 5 into the computer system, or you're taking it off the
6 fax. You're looking up customer information or, you
7 know, entering part numbers into your system. "I want
8 500 quarter inch nuts." Okay. You enter into that
9 process.

14:23:13 10 You see your availability. You can talk
11 about the availability, the price. Kind of like if
12 you're ordering from a catalog house, you know, ordering
13 curtains or whatever it might be.

14 Q. There's been some discussion in this case about
14:23:22 15 lines on customer orders.

16 Can you describe for the jury what a line
17 is?

18 A. Every item that someone wants to buy is its own
19 line on an order.

14:23:34 20 So I'll go back to the, you know, I want a
21 quarter -- quarter 20 nut, so you enter a part number, an
22 SKU, you enter how many pieces they're looking for, you
23 see availability, you have a price, packaging
24 configurations. And then, you know, that's one line on
14:23:52 25 an order so.

1 Q. And does each line have a different field
2 associated with it in terms of quantity and price?

3 A. Yeah, I mean every, every line is -- every item is
4 an individual line on an order. So one 400, you know,
14:24:10 5 however many people are ordering at a time.

6 Q. Do quotes or requests for quotes from customers
7 come in in kind of the same fashion?

8 A. The process, whether it's a quote or an order, it's
9 the exact same process.

14:24:22 10 It's -- might be in a different, you know,
11 something says order, something says quote, but the
12 process itself is the same.

13 Q. Going back to the 2007-2008 time frame, what was
14 your position with Hodell-Natco?

14:24:39 15 A. That's -- I was sales manager at the time of our
16 Cleveland branch.

17 Q. And did you have any staff underneath you or that
18 reported to you?

19 A. When I started -- in 2007, there was probably eight
14:24:52 20 inside salespeople and six reps across the country, six
21 rep agencies across the country.

22 Q. What were the inside sales people's jobs, what were
23 they supposed to do?

24 A. I mean, you know, basically our inside sales is
14:25:08 25 there to work with our customers for orders, for

1 quotations, for inventory checks, for pricing.

2 You know, each person had kind of a
3 specialized role into what type of product they worked
4 with, but, you know, all of them are your direct front
14:25:26 5 line to your customers.

6 Q. And back in that time frame, who did you report to?

7 A. I reported to Kevin Reidl.

8 Q. In your position as sales manager and your various
9 positions at Hodell-Natco, do you and your staff use
14:25:44 10 computer software, ERP software, to do your jobs?

11 A. Today, I mean it's essential to have -- we couldn't
12 do our jobs without our computer system.

13 Q. And can you give just the jury some detail on why
14 that is and how you use the system?

14:26:03 15 A. Every bit of information, whether it's our
16 customer's information, our inventory, our pricing, our
17 sources, all that's in your computer system. Right?

18 So there's no more rolodexes or handwritten
19 notes or, you know, back in the old days, but that -- so
14:26:24 20 every bit of pertinent information for us to do our jobs
21 is located inside our computer system.

22 Q. And does your team's use of that computer system
23 and software system tie into other aspects of Hodell's
24 business?

14:26:43 25 A. Yes, the sales dream team is the catalyst, I guess.

1 So the sales team is entering the order, that order gets
2 processed by the warehouse so they're picking it, and in
3 turn, going into shipping.

4 The sales order itself is triggering
14:26:58 5 purchasing then to, you know, see the usage or demand
6 requirements so that they can fill, fulfill those orders.

7 Q. And is this, the computer software program,
8 whatever it is, whatever name it has, is it important for
9 you and your team to do their jobs?

14:27:14 10 A. It's -- it's essential for us to do our jobs, yes.

11 Q. Why is that?

12 A. Again, without having access to those, any of that
13 information, it would be virtually impossible for us, it
14 would be impossible for us to do our jobs.

14:27:32 15 Q. What happens if the computer system doesn't work?

16 A. Well, you can't see your inventory, you can't see
17 the pricing to your customers, you can't see your
18 customers, you can't see, you know, pretty much any, any
19 bit of information that we have is in our systems.

14:27:54 20 Q. What computer programs have you used over your
21 tenure at Hodell-Natco?

22 A. When I started up until 2006, we used a system
23 called FACTS.

24 2007, 2009, we used SAP.

14:28:24 25 And after that, it was Profit 21, which

1 we're currently on now.

2 Q. How long did Hodell use FACTS?

3 A. 15, 16 years.

4 Q. And did you personally use the FACTS system?

14:28:30 5 A. Yeah, that's the system I grew up on in the
6 company, so we used it exclusively for all those years as
7 far as our order entry, our inventory, our customer
8 information.

9 So everything was in that system.

14:28:45 10 Q. Can you explain your experience using the FACTS
11 system?

12 A. From a sales -- from a front line standpoint, it
13 was an awesome system. We had easy, quick access to our
14 customer information, our inventory, the speed of the
14:29:04 15 system that we could work in, you could, you know, go
16 back and enter the information, quickly get through a
17 line, on to the next one.

18 That's -- we started entering orders off
19 the phone so you have your head set on and you could talk
14:29:20 20 to whoever and you're entering the order right as we go
21 along, right from the phone into the computer and not
22 having to write it down or take any time to do that.

23 Q. And Hodell eventually switched off FACTS, is that
24 right?

14:29:36 25 A. Yes.

1 Q. And on to SAP Business One?

2 A. Yes.

3 Q. Can you explain just generally your experience with
4 the Business One software as it compared to FACTS?

14:30:01 5 A. I mean, we -- it was a lot slower system than we
6 were used to with our FACTS system, so my sales team,
7 myself, it would literally take five to ten times longer
8 to do our jobs.

9 Every, you know, we mentioned line items or
14:30:09 10 items that you're entering, so for every single item that
11 we entered, it was a slower process.

12 So the longer the order, the slower it was.

13 It was hard times. I mean, again I had
14 eight people working under me. You know, a few of them
14:30:30 15 in the office crying over the situation that we were in.
16 It was -- it wasn't good. You know, it was very
17 stressful for all those people, so I had a number of my
18 sales team in my office crying every day over the stress
19 that they were undergoing through this system.

14:30:44 20 Q. And why was it so stressful for them?

21 A. I think the time of it mostly. Again, it's now
22 taking someone five to ten times longer to do their job,
23 so projects are building up, orders are building up,
24 they're stacking up, and you're trying to get done what
14:31:07 25 you need to do every day.

1 Putting off some of the other
2 responsibilities as a salesman that you might have to
3 follow up or do quotes or something else because they're
4 literally spending more than eight hours.

14:31:15 5 You know, my team was coming in early,
6 we're staying late, taking work home just to try to get
7 things done at that time.

8 Q. How did -- how did those problems you were just
9 describing tie into other aspects of Hodell's business?

14:31:31 10 A. You know, as I said earlier, so your order gets
11 entered, it goes out to the warehouse to get processed,
12 and so if there's a delay at the front end of that,
13 there's a delay getting to the warehouse to process or a
14 delay in the buyer seeing it to buy the items.

14:31:50 15 One of the stories, when we were on FACTS,
16 we had a customer in Pennsylvania, Paul B. Zimmerman,
17 they placed an order, whatever, on a Tuesday, okay, or a
18 Wednesday, and they placed it in the morning. We entered
19 the order, the order actually would ship out that day,
14:32:11 20 that's when we talked about service, that's what our
21 service was.

22 And I remember John Stauffer calling the
23 next day and saying --

24 MR. STAR: Objection.

14:32:21 25 THE COURT: Objection sustained.

1 THE WITNESS: Sorry.

2 Q. If you can just describe the process without saying
3 what other people saw or what other people said.

4 A. Okay. So went to add to the order by the time he
14:32:33 5 went to add to the order the following day, the order had
6 already been received in his warehouse so he couldn't add
7 to his order. So that's what we were used to in the old
8 system.

9 So now we were entering that order, that
14:32:46 10 same order isn't even being entered in the time with SAP
11 as it was already delivered to the customer on our old
12 system.

13 So that, that's a good analogy of what we
14 were facing right then.

14:32:59 15 Q. Was that an analogy or was that something that
16 actually transpired on a regular basis?

17 A. That was real. So, you know, what took a half
18 hour, took several hours. What took two hours, took a
19 day. What took, you know, that's a perfect example of
14:33:14 20 our order entry process.

21 Q. And did Hodell eventually switch off Business One?

22 A. Yes.

23 Q. And what software system did it go to after
24 Business One?

14:33:25 25 A. We went to Profit 21. That's the system we

1 currently run right now.

2 Q. What was the reaction of your team when it was
3 announced that Hodell was switching to Profit 21?

4 MR. STAR: Objection. Hearsay.

14:33:40 5 THE COURT: Overruled.

6 A. We had a lot of happy people at the office. You
7 know, a lot of those people that were struggling for the
8 years that we were under the old system were pretty happy
9 about a new -- a change.

14:33:56 10 Q. I want to focus on the Business One system for a
11 little bit.

12 Do you have any knowledge or did you
13 practice on the system before Hodell started using it in
14 the real world and live environment?

14:34:09 15 A. You know, there was some months leading up to our
16 go-live. The go-live date of switching over to the new
17 system.

18 So there were months, three, six months,
19 that we're getting familiar with the system so, you know,
14:34:25 20 I'm learning how to navigate the new system, my sales
21 team, I'm teaching my sales team how to navigate the new
22 system so part of it, you're learning how to do your
23 everyday job, you're learning how to manage that in a new
24 computer system.

14:34:39 25 And part of it is you're testing that

1 process so you have -- you're testing X amount of
2 customers with part numbers. You're going through your
3 process to see, number one, how to do it and the time
4 involved with doing it.

14:34:55 5 Q. And can you just describe for the jury who was
6 involved in that process?

7 A. Every one of our inside team at some point in time,
8 they were, number one, being familiar with it. Some of
9 the people were tasked with testing it a little heavier.
14:35:11 10 The people that were doing the most volume in line items
11 or transactions were tasked with testing the system to
12 push the system with that same challenge.

13 Q. Were you involved in practicing and
14 testing -- practicing on the system and testing the
14:35:31 15 system in an environment that would simulate how Hodell
16 would be using it after the go-live date?

17 A. You know, we had, whether we called it the test
18 system or the play system, but, you know, at the
19 beginning, you're just getting familiar with it, but as
14:35:47 20 time goes on, you're trying to become more realistic to
21 what it's going to be like when we go live.

22 So more information's being loaded, more
23 part numbers are being loaded, more customer information
24 is being put in so that it's more of a -- it's a real
14:36:05 25 life scenario as the system would run with as much

1 information as was in there when we were to go live.

2 Q. And again, how long of a process was this, at least
3 as far as your involvement?

14:36:21

4 A. I mean, it would have been several months. Maybe
5 three, maybe six months leading up to that go-live date.

6 Q. Did Hodell have anyone that you interacted with
7 that was assigned to oversee the testing process?

8 A. We have -- we had an IT staff so, yeah, I mean
9 there was some people involved with that process.

14:36:41

10 Q. Were there any outside companies or parties
11 involved with the testing?

12 A. Throughout that time we had a team from -- from
13 SAP, you know, in, in at Hodell on certain days, you
14 know, testing days or going through that process teaching
15 us how to use it.

14:36:58

16 Q. Did you personally -- well, you were personally
17 involved in the testing process, is that correct?

18 A. Yes. I mean, I was -- I was one of the people
19 testing it and training my staff how to work with the
20 system as well.

14:37:14

21 Q. Did you observe the performance of the software
22 while it was being tested before Hodell went live?

23 A. Yeah. I mean, absolutely.

24 You know, there was -- there was some
25 concerns immediately that this wasn't at the same pace

14:37:28

1 that we were used to. We were used to just being able to
2 enter those orders and get them done and immediately, you
3 know, there was a delay.

4 You know, one of the things that -- and
14:37:54 5 I -- one of the things that when we had some of the
6 people in from SAP helping us was us saying "You know,
7 hey, this system is not -- is not meeting our
8 requirements."

9 And, well, you know, this is the test
14:38:10 10 system. This is not the live system. The go-live is
11 going to be better than the test system is.

12 And I think in order to learn exactly our
13 roles during this time frame, we'd have -- and I couldn't
14 tell you which person from SAP was in with us, but they
14:38:24 15 were shadowing us during our jobs, right, because they
16 needed to see what we do every day in order to get
17 whatever, you know, understanding of what my salespeople
18 and myself were doing every day to see how we function in
19 real-time to see what our requirements were going to be
14:38:42 20 once we went on to the new system.

21 Q. And is it your belief that there was actually
22 someone from SAP at -- on the ground at Hodell during the
23 testing phase?

24 A. SAP, LSi, you know, I'm not -- to me, as a
14:39:01 25 sales -- I wasn't a decision-maker in buying the system,

1 so I don't differentiate between SAP and LSi.

2 To me it's one, it's one entity, it's one
3 unit that was helping us with the computer system.

14:39:21

4 Q. Well, did you express your concerns to anyone about
5 the testing and performance?

6 A. I said it before, you know, a second ago, who I
7 expressed that to, I don't know.

14:39:36

8 The only -- the only person's name I
9 remember was Marcia. Marcia Weissman, right. I think
10 she was one of the members of that team that was there.

14:39:50

11 And her specifically saying that, you know,
12 that -- "the system's going to work better once we go
13 live, so what you're seeing here is just the test mode.
14 Don't -- you know, don't concern. It will be better with
15 the live, the go-live system."

16 Q. Did Hodel ultimately go live on the Business One
17 system?

18 A. Yes, we did.

19 Q. And do you recall about when that was?

14:40:09

20 A. March, April of 2007.

21 Q. And did you personally use the Business One system
22 as part of your job?

23 A. Yes. I mean, absolutely.

14:40:24

24 Q. Was that part of your typical responsibilities, to
25 use -- your everyday responsibilities to use the system

1 in that capacity at that time?

2 A. Yeah. So, you know, when we first went live, as I
3 mentioned before, it was a slower system than we were
4 used to.

14:40:37 5 So the first order of business, if you have
6 orders to fulfill, you have to fulfill your orders. With
7 every process being longer, I take a bigger role in order
8 entry to help my team out.

9 So if something took five times longer, I
14:40:57 10 wanted to help out, step up to make sure we got those
11 orders processed as quickly as possible.

12 So I took a heavier role in the order entry
13 process than I would have, you know, prior to that where
14 I was more responsible for looking for new business
14:41:09 15 opportunities, working on quotes, working with customers,
16 working with reps.

17 So for that time, we're devoting our time
18 to make sure that those orders are getting out on time,
19 in as timely a fashion as we could.

14:41:25 20 Q. Can you just give the jury some examples of how the
21 slowness of the system you've been describing played into
22 Hodell's business operations at least from your point of
23 view at the time?

24 A. Well, you know, from -- if all your focus is put on
14:41:49 25 order entry, there's a whole other part of our job as

1 salespeople, we have quotes coming in, we have new
2 opportunities to look at, you have projects that you're
3 working on.

4 So during that time frame, we're a hundred
14:42:02 5 percent focused on managing those orders to make sure
6 they're done. So there's quotes that aren't getting
7 answered in a timely fashion, there's quotes we're not
8 following up on in a timely fashion. There's other
9 projects, trying to build new opportunities that we're
14:42:16 10 not even focusing on during that time.

11 The, you know, some of our customers, you
12 know, would call us on the phone, so we have -- we had to
13 find, basically we had to find workarounds that we were
14 able to take an order entered off the phone. Now we
14:42:42 15 can't do that because we're waiting for the line, the
16 order line, the SKU to process, so we actually went back
17 and started writing orders down and then entering them
18 when we had time to work on them.

19 Q. When customarily would you have time to enter them
14:42:59 20 or be able to enter them?

21 A. During -- during that time, I mean, we are -- I had
22 people coming in early, I had people staying late, I had
23 people taking work home with them.

24 You know, whether it's -- what we noticed
14:43:15 25 is that in the morning at 6:00 a.m. or 7:00 a.m., the

1 system processed quicker than at 3:00 p.m.

2 It was never equivalent to what we were
3 used to, but this time was better. You know, we have
4 locations across the country so 9:00 o'clock, St. Louis
14:43:36 5 and Texas, Reno, when all these other users are coming on
6 the system, the speed of the system slowed down because
7 there were more users on that system.

8 So at 3:00 o'clock, it was a bad time to
9 try to enter an order because we had issues with
14:43:52 10 the -- more lag, more time than it was at 6:00 or
11 7:00 a.m.

12 So, you know, a lot of our -- we would try
13 to get a lot of that work done in the mornings, as much
14 as we could, so.

14:44:04 15 Q. Just to be clear, is this something that you
16 personally experienced as part of or in your position
17 with Hodell-Natco at this time?

18 A. Yeah, absolutely.

19 I mean, a lot -- I had access to work from
14:44:17 20 home so I would take, try to take, you know, help out my
21 team, I take the orders home, work on them at night, as
22 the kids went to bed, do anything we could just to keep
23 up with our workload.

24 Q. You talked about quotes and not following up on
14:44:33 25 quotes.

1 Can you just describe what that means for
2 the jury?

3 A. So, you know, you have orders and then someone
4 wants -- needs a price on something so they're going to
14:44:42 5 send you their quote, you know, how much is your -- go
6 back to a quarter inch hex nut, if you don't respond to
7 that quote in a timely fashion, they're getting that item
8 from someone else.

9 So if I didn't quote the item, they're not
14:44:58 10 even going to look to us as a source for that item so
11 they're going to go wherever to get that same product.

12 So we weren't managing our quotes. And in
13 addition to managing the quotes, we're not following up
14 upon those quotes.

14:45:13 15 Q. Did you have employees or people on your staff
16 working overtime hours during this time?

17 A. I had people coming in, you know, coming in early,
18 6:00 a.m., staying after 5:00, taking work home with them
19 to try to keep up and not stress out their time during
14:45:36 20 eight to five.

21 So every one of our team members tried to
22 help out, yes.

23 Q. Can you describe, did you and the people on your
24 team do anything to try to alleviate the problems that
14:45:50 25 you were encountering with the SAP system?

1 A. You know, we try to find a work around, right. So
2 as I said with the phone, so we were able to take an
3 order off the phone before. We can't do it now.
4 Someone's calling in on the phone and you can't enter it.
14:46:08 5 They're impatient, they just want to give you the order.
6 So, you know, one of the workarounds is I'm going to
7 write that order down.

8 You just, you had to try to find a way to
9 work with what you had so.

14:46:24 10 Q. Is there anything else that you and your team did
11 to try to kind of work around problems you had entering
12 or taking orders or issuing quotes?

13 A. Yeah, we -- there was a situation with one, one
14 customer that we -- I made -- I made hard copies of the
14:46:46 15 order that came in so our warehouse could work on that
16 part of the order while we were trying to enter the order
17 into the system.

18 So, you know, one work around is making a
19 copy for your warehouse to work somewhat blind because we
14:47:00 20 don't have the system to tell them where everything is in
21 our warehouse, but it was the best way that we could
22 manage it at that given moment.

23 Q. Were there ever times when the system just shut
24 down, the computer system ever just shut down altogether?

14:47:16 25 A. We had some pretty lengthy orders, we had farm

1 store supply customers, hardware stores that would order
2 100, 200, 300 or more line item orders, and, you know,
3 the system would never fail you on a two-line order, it
4 would fail you on Line 186 of 200 lines.

14:47:40 5 The order would just drop out of our
6 system. And it wasn't, you know, you couldn't go back
7 into it. It wasn't there any more.

8 You know, one of the, I guess, workarounds
9 we learned is that, you know, if I save it every 50
14:47:56 10 lines, then the worst case scenario is I'm going to lose
11 49 lines if the system drops. But the saving process was
12 as lengthy as entering, you know, a lot of those lines so
13 you'd have to click save, wait for it to, you know, save
14 the order, go through credit approval, you know, whatever
14:48:16 15 the process was, end out of your order, go back into the
16 customer, pull the order back up, and now, you know,
17 you're back in entering a few more lines. But then do
18 that every so often.

19 It wasn't a quick, it wasn't a quick fix,
14:48:31 20 but it was better than having to re-enter an entire
21 order.

22 Q. And just so I'm clear, if an order was dropped off
23 the system at Line 158, how long would you have typically
24 spent just getting to a line -- getting to Line 158?

14:48:49 25 A. That, that was -- that was a day. I mean, several

1 hours, four, six hours, a potential day depending on, you
2 know, how the system was running at the time.

3 So that was when, you know, someone was
4 having a nervous break down at the end of the day. You
14:49:02 5 know, it's 4:30, you're trying to get it done and you
6 lose the order, that's when the tears would come out for,
7 you know, a lot -- for your sales team. So that was
8 tough.

9 Q. Do you recall anyone actually being able to enter
14:49:17 10 an order into the computer system while they were on the
11 phone with a customer?

12 A. The only scenario would be maybe a one-line order,
13 all right? So you have one line. You can enter it off
14 the phone.

14:49:32 15 Anything that had multiple lines, there was
16 no way to do it.

17 Q. Does Hodell or at this time did Hodell have certain
18 customers that these kind of slowness delays were
19 particularly problematic for?

14:49:46 20 A. You know, we have a pretty good relationship with
21 Amish customers, so, you know, Mr. Miller would call in
22 from the pay phone at the corner of whatever and whatever
23 intersection in Millersburg, and he'd have you on the
24 phone for an hour and a half rattling off 150 items, 200
14:50:06 25 items, and he was not -- he was not patient, right, so he

1 wanted to give you that order and, you know, with the old
2 system, with FACTS we could enter that item, we could
3 tell him if we had it, tell how much it cost, at the end
4 of those 100 line, 80 lines, a hundred lines, 200 lines,
14:50:29 5 whatever it is, say "Hey, Mr. Miller it's \$1,250 for your
6 bolts," because once he's off his phone, he's in his
7 carriage driving back to his house.

8 We can't contact him. We can't e-mail him.
9 We can't call him. We can mail him. So that was when it
14:50:43 10 all set in.

11 Our local and industrial distributors, they
12 call in and they want that product right now and I want
13 this, this and this and I want it right now. I want my
14 semi-driver to go get it, and we couldn't even enter the
14:50:56 15 order in the time that he wanted to come get the order.

16 So the Amish and a lot of our local guys
17 had -- it was the biggest impact on them.

18 Q. Do you recall any customers or do you recall a
19 customer by the name of Union Metal?

14:51:13 20 A. Yes.

21 Q. And who was Union Metal?

22 A. Union Metal was a new opportunity that we had been
23 developing in 2006, and just about the same time we went
24 on to SAP, we went live with the new opportunity with
14:51:31 25 Union Metal. So it was a -- the times are very -- I can

1 remember those for sure.

2 Q. And what happened with the Union Metal
3 relationship?

4 A. Initially it didn't go very well.

14:51:48 5 That, the example I gave where we made
6 copies to give to our warehouse, it's one of the ways we
7 found around the system, but a lot of line items, a lot
8 of orders, a lot of special items, and we failed
9 miserably at the beginning. We weren't able to get the
14:52:06 10 orders in in time. We weren't able to process it. So we
11 started with the copies to the warehouse so they could at
12 least do something to get these orders working.

13 They canceled. You know, we didn't meet
14 their lead time so they canceled orders from us. I don't
14:52:25 15 know how many. They fulfilled -- they withheld some
16 orders from us and fulfilled that inventory with a past
17 supplier that they had, so we didn't receive new orders.
18 I don't know how many new orders. I don't know the
19 dollar amount. It never came in.

14:52:42 20 But they canceled orders and they didn't
21 order product from us for several weeks, a month, until
22 we were able to find that way to navigate through the
23 system, to make copies, give it to the warehouse so they
24 could work on it without having orders into the system.

14:53:03 25 Q. To your knowledge were other orders lost during

1 this time period?

2 A. That's the one -- just because of the timing was
3 right on with the SAP transition, that that's one I can
4 specifically remember, but I can't, you know, that was
14:53:20 5 many years ago.

6 I can't remember any other order that we
7 had issues with.

8 Q. But do you have any doubt that orders were lost or
9 canceled because of your inability to respond to
14:53:31 10 customers?

11 MR. STAR: Objection.

12 THE COURT: The objection is sustained.

13 Q. Oh, was Hodell unable to quote customers on a
14 timely basis?

14:53:58 15 A. Absolutely. I mean, the speed of the system
16 impacted our order entry process, quote process. So we
17 were not responding to things in a timely fashion.

18 Thus, not getting new opportunities, new
19 orders from our customers.

14:53:58 20 Q. And just so I'm clear, not being able to quote
21 customers impacts your ability to acquire business, not
22 just new business but business from an existing customer,
23 is that correct?

24 MR. STAR: Objection. Leading.

14:54:14 25 THE COURT: Overruled.

1 You can answer.

2 A. Okay. Yeah, I mean if you're not -- the quotes are
3 coming in from, number one, your everyday customers. If
4 you're not responding to them in the time that they're
14:54:29 5 used to, they're going to look elsewhere. New
6 opportunities with customers that we don't have, so
7 combinations of both existing and new opportunities.

8 Q. And were you and your team putting aside other
9 opportunities just to do the basic order input that you
14:54:45 10 had to do on the existing orders?

11 A. Right. The first priority is to get the orders
12 done.

13 Once that is done, then you can work on the
14 quotes, but we -- excuse me -- we had to focus on getting
14:55:00 15 the orders processed as fast, as quickly as possible to
16 fulfill those orders for our customers.

17 The quotes were secondary.

18 Q. And were you able to track or keep track of or keep
19 records of orders or quotes, orders that were lost or
14:55:16 20 quotes that couldn't be followed up on?

21 A. No. I -- I wasn't able to, you know, our focus was
22 from the lowest salesperson on the team to myself, our
23 focus was just to get the orders in.

24 I didn't -- we didn't look at that. There
14:55:32 25 wasn't time enough to look at what we were missing; just

1 what we could get into the system to process it as
2 quickly as possible.

3 Q. Do you know what a trouble ticket is?

4 A. Yes. Yeah, we had internal IT, you know,
14:55:49 5 communication thing that if you have an issue with your
6 phone or computer or fax machine, whatever one of those
7 things, that you'd put a trouble ticket in and then our
8 IT team would move that to whomever may be responsible
9 for that.

14:56:07 10 And then they would respond to whatever
11 your problem is.

12 Q. Well, did Hodel utilize a trouble ticket process
13 or the Business One system?

14 A. Yes. Yes, we did.

14:56:17 15 Q. And can you describe what that process was?

16 A. You know, if there's a -- if there's an issue with
17 the speed of the system or an order disappearing or notes
18 not being on the order that you're used to, you would
19 load a trouble ticket and IT would respond and say "Yes,
14:56:39 20 I have it. You know, we're working on it. Someone will
21 respond to it," whatever it might be.

22 So yes, we did use it.

23 Now, in Cleveland, you know, our Cleveland
24 office where I work is our corporate office so our IT
14:56:52 25 staff is there, our management staff is there, and

1 literally, you know, ten feet down the hall from my
2 office is our IT office. So honestly, a lot of times,
3 I'm going to walk down the hall and I'm going to talk to
4 a human and not enter a trouble ticket.

14:57:11 5 So I would just literally walk down the
6 hall and talk to people.

7 Q. Did you enter a lot of trouble tickets with regard
8 to all these problems you've been discussing or is this
9 just conversations?

14:57:20 10 A. Yeah. I mean, I, over the years, I don't know how
11 many trouble tickets I've entered, right? So I've
12 entered a handful with the SAP thing.

13 You know, the system is slow. Okay. We
14 acknowledge it. So I enter a trouble ticket, someone
14:57:33 15 else enters a trouble ticket for it, and you know the
16 system is slow. So every day did I enter a trouble
17 ticket? No, I mean I didn't need to. We've addressed it
18 once. We're not going to address it over and over again
19 because it's not going to make it better, you know, so a
14:57:52 20 handful of trouble tickets I probably entered in my time,
21 yes.

22 Q. Well, did you do anything to sit there and document
23 how slow the system was or how it was impacting you or
24 write it down or make a note of it?

14:58:06 25 A. No. No. I mean, we never -- we never sat and

1 timed it or looked at the hour glass. You know, you're
2 staring at an hour glass waiting for that thing to move
3 on. I never timed it. I didn't look at it.

4 Everyone was just really trying to focus on
14:58:21 5 getting their jobs done.

6 Q. Did the speed of the system from your perspective
7 and your personal involvement with the software system,
8 did it ever get any better from go-live until the day
9 that you switched off?

14:58:51 10 A. It's kind of a hard question, right?

11 So you -- did Hodell learn, did my
12 employees learn to work around the system? Did it
13 marginally improve so that it was better? It's possible.
14 But it was never what we had. You know, we had a great
14:59:14 15 system that moved quickly and that's what my team was
16 used to, so we -- it, from the beginning it was really
17 bad. If it improved, it improved marginally over that
18 two-year period, but it never got to the point of what we
19 had with the old system or, frankly, what we have with
14:59:32 20 the new system so.

21 Q. And with the old system, just so I'm clear, pulling
22 up inventory or cycling to a new field or a line, how
23 fast did that go?

24 A. I mean there wasn't a delay. There wasn't an hour
14:59:47 25 glass. You -- I want to go to inventory, I'm in

1 inventory, you know, boom, you're there. There was no,
2 no delay, no wait.

3 Q. In other words, the system was waiting on you; you
4 weren't waiting on the system?

15:00:00 5 A. Correct. Correct.

6 Q. And it's your personal belief and knowledge that
7 that never happened with SAP Business One?

8 A. It never got back to that, you know, moment that we
9 had with the old system. It never was that quick.

15:00:19 10 You were always, always waiting, you know,
11 the hour glass. It's -- that became a joke, you know,
12 seeing that hour glass, everybody would joke about it,
13 oh, I got the hour glass, great. So, no, it never got
14 back to the old system.

15:00:33 15 Q. And you mentioned earlier on in your testimony that
16 Hodell's service, customer service, is kind of how
17 it -- it is how it separates itself from its competitors,
18 right?

19 A. Yeah. You know, again, everybody has fasteners or
15:00:52 20 chain or, you know, quarter inch nut or quarter inch
21 washer, they're standard, they're commodity items.

22 But it's the service levels that we live
23 by, right? It's the service that we provide, the service
24 level we give our customers that separates us from all
15:01:08 25 those other people so.

1 Q. Well, in your interactions with customers, in your
2 role in the sales department, did Hodell's reputation
3 suffer during this time during SAP Business One system?

4 MR. STAR: Objection.

15:01:24 5 THE COURT: Overruled.

6 A. We mentioned the sales reps before, so yes. You
7 know, we had a lot of customers that were demanding.
8 They were -- they grew comfortable saying oh, if I order
9 today I'm going to get it tomorrow. If I order it now
10 I'm going to get it in an hour.

11 That wasn't the case, you know, once we
12 went on to the new system so the reps that we talked
13 about, they were taking some hits as far as our service
14 levels. They were hearing it from where they go out and
15 visit our customers and hear hey, you know what happened
16 to Hodell, what happened to Hodell.

17 As sales manager you're taking a lot of
18 phone calls, it's an uncomfortable time to take a lot of
19 phone calls from unhappy customers so, yes, I mean our
20 reputation, our service levels declined during that time.

21 MR. LAMBERT: Your Honor, I know you
22 usually take a break around now. I might be done. Do
23 you want to take a break and then come back?

24 THE COURT: Sure.

15:02:22 25 MR. LAMBERT: Okay.

1 THE COURT: Okay, folks, we'll take our
2 afternoon break, 15 minutes.

3 Keep in mind the admonition and enjoy the
4 break.

15:02:30 5 (Jury out).

6 MR. STAR: Your Honor, we wanted to
7 reassert our prior objections to --

8 THE COURT: Explain what you did with Judge
9 Wells.

15:02:58 10 MR. STAR: Certainly.

11 Back in, I want to say September of last
12 year, pursuant to Judge Wells' pretrial order at that
13 point in time, the parties submitted designations for
14 deposition testimony for Jon Woodrum and then exchanged
15 objections. Judge Wells ruled on some of those and
16 allowed the Plaintiff to play many of the clips they
17 played today.

18 We're just reasserting our objections that
19 we made previously.

15:03:28 20 THE COURT: Okay.

21 MR. STAR: Thank you, Your Honor.

22 THE COURT: Yes.

23 MR. LAMBERT: I don't know that we ever got
24 to put our response to those objections on the record.

15:03:34 25 I don't know if that's necessary at this

1 point in time.

2 THE COURT: I don't care.

3 MR. LAMBERT: Okay.

4 (Recess taken).

15:23:47 5 THE COURT: Are you finished, Mr. Lambert?

6 MR. LAMBERT: Yes, Your Honor.

7 THE COURT: Okay. You may cross-examine.

8 MR. STAR: Thank you.

9 CROSS-EXAMINATION OF JAIME CLARKE

15:23:57 10 BY MR. STAR:

11 Q. Good afternoon, Mr. Clarke.

12 A. Good afternoon.

13 Q. How are you?

14 A. Excellent. Yourself?

15:24:11 15 Q. Good. We'll have you out of here by 4:30.

16 A. Thank you.

17 Q. You testified that you were involved in some of the
18 testing of the Business One system before Hodel went
19 live in March, 2007?

15:24:29 20 A. Yes. I was involved in the testing.

21 Q. The system that you went live on, you were aware,
22 was Business One plus a product called In-Flight and
23 another product called Radio Beacon?

24 A. It was one, you know, to me it was one system.

15:24:45 25 Q. To you, everything was just one system. You hadn't

1 really been involved in selecting the system or
2 developing it, right?

3 A. Correct.

4 Q. Okay. Let's talk a little bit about what you
15:24:57 5 personally observed while you were testing the system
6 before go-live.

7 You agree with me that what you personally
8 saw was very, very slow performance in the months leading
9 up to go-live, right?

15:25:08 10 A. Absolutely.

11 Q. Okay. And you saw that very, very slow performance
12 throughout all of the testing you were doing before
13 go-live, right?

14 A. Yes, we did.

15:25:18 15 Q. You never saw that very, very slow performance
16 actually increase or get better before you went live,
17 right?

18 A. Correct.

19 Q. So obviously once you went live and you started
15:25:33 20 using the system with your live data and really entering
21 customer orders, you weren't surprised by the performance
22 that Hodell was seeing and that you personally were
23 observing after go-live, right?

24 A. One of the things I had mentioned earlier was the
15:25:47 25 reassurances of, well, this is the test system, you know,

1 the real system's going to be improved over that so.

2 Q. Okay. Let's just pivot to that real quick because
3 you mentioned you were getting those reassurances and you
4 mentioned a woman by the name of Marcia Weissman?

15:26:04 5 A. Marcia is the only name out of that group of people
6 that I remember.

7 Q. Got it. And would you be surprised if you found
8 out that Ms. Weissman had been employed by a company
9 called IBIS/LSi and not by SAP?

15:26:18 10 A. You know, again, like I said, SAP, LSi, it was one,
11 one thing to me.

12 Q. Got it. Just so everybody's clear, you didn't
13 personally have a direct role in selecting or
14 implementing this somewhere; your role was more with
15:26:35 15 respect to testing and learning the system like everybody
16 else was doing before you went live?

17 A. Exactly. I mean, we -- from a sales process, I was
18 able to see a couple of the three systems. I believe
19 that someone came in and was trying to sell us.

15:26:54 20 And SAP was one of them, a company in
21 Toledo, and I don't remember the other company. But, so,
22 I was part of that sales process, but not part of the
23 decision-making process.

24 Q. And the only name of a person that you remember
15:27:08 25 meeting that you think is in any way linked up with SAP

1 or the system that you went live with in March of 2007 is
2 Marcia Weissman, right?

3 A. Marcia really stood out to me so, yes, I do
4 remember her.

15:27:20 5 Q. Okay. All right.

6 So you mentioned the slowness that you were
7 personally witnessing in the pre-go-live testing, it
8 lasted right up through go-live; you just never saw that
9 get any better?

15:27:32 10 A. Correct.

11 Q. Now, your testimony is that your job at the company
12 at that time was you were managing the team of inside
13 sales reps, the folks that were actually entering orders
14 in the system?

15:27:45 15 A. Yes, sir.

16 Q. So part of the pre-go-live testing that you were
17 doing involved you and those people working for you
18 actually getting on the test system and trying to enter
19 orders, right?

15:27:57 20 A. Correct.

21 Q. And in doing that, that's where you saw very, very
22 slow performance?

23 A. Yes.

24 Q. And the test system, let's talk about that. I know
15:28:07 25 you're not a technical guy, right?

1 A. I'm not particularly.

2 Q. Okay. But it sounded like you had some, some
3 knowledge as to what had been set up.

4 You understand that it was set up with only
15:28:17 5 some of the data from Hodell's overall customer files,
6 those sorts of things?

7 A. The beginning of the test phase was with very
8 select number of customers and part numbers.

9 And as that process, the months went on,
15:28:35 10 there was more information loaded so it was more like a
11 real, you know, a real live system with all that data in
12 there so.

13 Q. So let's go back to early on when you were
14 initially doing the testing and it was just a limited
15:28:46 15 number of parts and customer information that you were
16 actually testing.

17 Even then, you were seeing very, very slow
18 performance, right?

19 A. Correct.

15:28:54 20 Q. And when you started to load more information into
21 the test system prior to going live, you still saw that
22 same poor performance?

23 A. Yes.

24 Q. Okay. And back in March of 2007, Hodell had
15:29:10 25 something like 20 to 40,000 different SKUs, correct?

1 A. From the FACTS we were running 30, 40,000, it
2 sounds accurate, yes.

3 Q. And that's the total number of parts in your
4 inventory, right?

15:29:25 5 A. Correct.

6 Q. Okay. How many of those parts, if you know, were
7 actually loaded into the test system?

8 A. Again at the beginning there was very few, right.
9 So we started the test system with five parts, you know,

15:29:41 10 I don't know, I can't quote a number, but as we got
11 closer to that go-live date, more information was loaded
12 so you could stress test the system, right, to see if it
13 was going to be able to handle all that information.

14 Q. And the maximum number of actual parts or SKUs that
15:30:14 15 could have been loaded into the test system would have
16 been 40,000 items, right?

17 A. Whatever the equivalent number was.

18 You know, we -- we added some extra part
19 numbers maybe, you know, moving into the SAP, but 40,000
15:30:16 20 sounds like a real number.

21 Q. Okay. So Hodel doesn't have hundreds, like
22 150,000 SKUs; it only has something like 40,000 SKUs,
23 right?

24 A. We may now have 150,000. You know, I -- I don't
15:30:32 25 know.

1 Q. All right. We'll talk about that, but back
2 in -- back in the time of go-live in March of 2007,
3 Hodel had something around 40,000 part numbers or what's
4 been referred to as SKUs, right?

15:30:43 5 A. That sounds accurate.

6 Q. Okay. Now, part of the pre-go-live testing as you
7 said was entering orders on the system, actually you and
8 people, the inside sales reps, putting in orders.

9 You don't remember entering any order that
15:31:04 10 exceeded a hundred lines in that pre-go-live testing, do
11 you?

12 A. I personally did not.

13 You know, we had some of -- I think I
14 mentioned earlier, the people that were doing more of the
15:31:20 15 testing were heavier users, okay, so people that would
16 have entered more orders on a daily basis or more lines
17 are the people that were testing it heavier on the quote
18 sides of things or the test side of things to see if it
19 would keep up with their, you know, workload.

15:31:46 20 I didn't --

21 Q. Sorry. I didn't mean to cut you off.

22 So you didn't personally try to enter an
23 order that was very, very long like that?

24 A. I did not.

15:31:46 25 Q. You tried to enter some smaller orders, though, did

1 you not?

2 A. Yes.

3 Q. And even there, you saw the bad performance that
4 you've been talking about?

15:31:50 5 A. Correct.

6 Q. Okay.

7 So the performance that you saw in the
8 system when you guys moved to Business One plus In-Flight
9 and Radio Beacon at go-live was what you had been seeing
10 for the months leading up to go-live, right, the same bad
11 performance?

12 A. I mean it could have possibly been worse than what
13 we were seeing in the test mode.

14 Q. Okay. Now, leading up to the time of go-live, the
15 volume of work was actually higher -- let me ask a better
16 question.

17 You'd agree that the volume of work that
18 you and the folks you were managing, the volume that they
19 had to do right after go-live was higher than normal
20 because part of what you needed to do was go back and
21 re-enter manually certain standing orders that Hodell had
22 for customers; they had to be transferred from the old
23 system to the new system, correct?

24 A. We had blanket orders, orders that were outstanding
15:32:49 25 in our old system that were released over a year's period

1 so, yes, we had to enter some orders into the new system.

2 We did some of that prior to go-live. Kind
3 of a priority thing, right? If it needed to go out
4 tomorrow, it got entered but if it needed to go out in
15:33:17 5 December or the following year, it could wait a little
6 while so it was on a priority basis.

7 Q. Just so we all understand, in your old system which
8 was the FACTS system, over time, you had developed what
9 you've called standing orders. That's a -- or a blanket
15:33:20 10 order, where a customer will order the same thing at the
11 same time, say, every month or every couple of months,
12 right?

13 A. Yeah. You know, a blanket order is something
14 somebody commits. I'm going to use 10,000 of whatever,
15:33:33 15 every month, so we have twelve orders in the system for
16 one entire year.

17 Q. Yes. And over time, in working with customers in
18 the old system, there were quite a number of those,
19 right, those blanket orders?

15:33:48 20 A. Specifically to Cleveland, I don't have a number of
21 those orders but, yes, we had some orders in the system
22 that were blanket orders that had to be reentered.

23 Q. All right.

24 And so then part of what you needed to do
15:33:59 25 before you went live using Business One and Radio Beacon

1 and In-Flight was to move those standing orders over to
2 the new system, and you did some of that before go-live,
3 right?

4 A. Yeah. I believe we had some of those done before
15:34:11 5 the go-live date, and then again, on a priority basis as
6 time permitted, we entered them into the new system.

7 Q. Okay. So there was just naturally somewhat more
8 work to do when you switched to the new system because
9 you had to manually take all those standing orders that
15:34:29 10 you hadn't put in prior to go-live and load them up to
11 the new system after go-live, right?

12 A. Slightly. Slightly.

13 Q. You mentioned a company called Union Metal
14 Corporation.

15:35:04 15 Just let me confirm that I understood you
16 correctly. They were sort of a brand new customer just
17 at the time the switch was going over from the old system
18 to the Business One/In-Flight/Radio Beacon system, right?

19 A. Yes.

15:35:10 20 Q. And you mentioned that within a couple of months, I
21 think you said a month or some number of weeks, you
22 actually were able to take and fulfill all the orders
23 from this new customer, right?

24 A. We found a way to work around the system in order
15:35:27 25 to fulfill those orders.

1 Q. And you initially said that I think it was on
2 the -- the actual day of go-live, there were some orders
3 that they were trying to place that you couldn't get
4 placed and they may have gone someplace else?

15:35:41 5 A. I mean it was within the first few, I mean, month
6 so we had -- we're entering orders, we were trying to
7 fulfill them. They canceled the order from us and went
8 to their old supplier, purchased enough hardware to
9 fulfill their requirements at the time until we were able
15:35:55 10 to manage through, you know, the system.

11 Q. And -- sorry, I didn't mean to jump in.

12 And you said, I believe, that you're not
13 sure of the number of canceled orders from, Union Metal
14 Corporation, is that right?

15:36:08 15 A. I don't remember the number of canceled orders.

16 Q. And you don't also remember the dollar value of any
17 of those orders, right?

18 A. I don't know the dollar value of those orders, nor
19 do I know the dollar value of the orders they placed with
15:36:27 20 our competitor.

21 Q. Now, you mentioned some of those orders from Union
22 Metal Corporation were what you called canceled. Would I
23 be correct to assume that for an order to be canceled, it
24 actually had to be placed into the system first and then
15:36:39 25 canceled and pulled back out of the system?

1 A. If we had the time, if we had entered those orders
2 at that time, we would have had to cancel them from the
3 system. If we didn't enter them all by that point, then
4 no, we wouldn't cancel.

15:36:48 5 Q. And do you know if there were any orders that you
6 actually entered for Union Metal Corporation into the
7 system which you actually then canceled?

8 A. I'm sure there were, yes.

9 Q. All right. Just so we're clear, you didn't pull
15:37:00 10 any records from the system to see what those canceled
11 orders were, you know, how many parts or the dollar value
12 or the date of those canceled orders?

13 A. I don't have access to that system any longer so,
14 no, I didn't.

15:37:11 15 Q. Okay. Sir, you had some involvement in answering
16 some questions with respect to Hodell's requirements when
17 it moved to a new system, right, off of Business One?

18 Do you recall that?

19 A. Less involvements than -- the involvements that I
15:37:49 20 had going from FACTS to SAP, I had much less involvement
21 with the Profit 21 change, if that's what the question
22 was.

23 Q. Yes. You do recall filling out a questionnaire for
24 Profit 21?

15:38:06 25 A. Yeah. I -- not off the top of my head, but if you

1 showed it to me, you know, I would be able to say yes or
2 no.

3 Q. I'll do that and we'll try to move through it with
4 some speed.

15:38:17 5 MR. STAR: Your Honor, may I approach?

6 THE COURT: Sure.

7 A. It's not that whole thing, right?

8 Q. I'm not going to ask you to read that whole thing.

9 A. Okay.

15:38:38 10 Q. It's 281. You know what, Bob, before we go there,
11 Bob, would you put up Exhibit 4, please?

12 Sir, Exhibit 4 was previously marked in
13 this case. It's a printout of -- Bob, maybe you can make
14 it bigger so Mr. Clarke can see it.

15:39:09 15 A. Please.

16 Q. It's a printout of certain pages from Hodell's
17 website. This was done a couple years back in connection
18 with some depositions in this case.

19 You're familiar with your company's
15:39:17 20 website, right?

21 A. Sure.

22 Q. Okay. Bob, can you go to the second page, please?
23 And blow that up, if you don't mind.

24 Mr. Clarke, I want to focus on the middle
15:39:36 25 paragraph saying, "We stock."

1 Do you mind reading that, sir?

2 A. "We stock a massive inventory of over 40,000
3 industrial fasteners and chain items, and provide our
4 customers with expertise in sourcing hard-to-find items.
15:40:01 5 By offering one of the most extensive product lines in
6 the industry and skillfully tracking down scarce items,
7 we are capable of accommodating even the most challenging
8 customer product needs."

9 Q. Okay. And where it says "A massive inventory of
15:40:12 10 over 40,000 industrial fastener and chain items," that's
11 related to the number of SKUs, the SKUs, right? That
12 comports with your recollection that there were something
13 like 30 or 40,000 SKUs in Hodell's inventory, right?

14 A. I believe so, yes.

15:40:33 15 Q. Okay. Thank you. Bob, why don't you take that
16 down? I'm going to try to use this projector, maybe move
17 us along a little faster through the document.

18 Mr. Clarke, let's go back to Exhibit 281.
19 Before I put this up for anybody else to see, I just want
15:40:49 20 you to be comfortable that you participated in preparing
21 at least a portion of this document.

22 The thing is massive. So if you flip, if
23 you see at the bottom, there are page numbers on just
24 about every one of the pages, and if you flip down to
15:41:05 25 Page 97.

1 A. All right.

2 Q. All right.

3 And do you see -- just take a moment and
4 reorient yourself and let me know if that refreshes your
15:41:26 5 recollection as having been involved in answering the
6 questionnaire with respect to the Profit 21 system that
7 Hodel was switching to.

8 A. I'll be honest, looking at this, it doesn't, but
9 obviously I can see my name there, so.

15:41:43 10 Q. You have no doubt that you did provide some
11 responses and answer a questionnaire in connection with
12 Profit 21?

13 A. I must have had to.

14 Q. Okay.

15:42:05 15 And you recall that was done back around
16 September of 2008? If you look at the front of the
17 document, sir.

18 A. Yes. I see that.

19 Q. All right. I'm going to try to use this thing, see
15:42:12 20 if we can all see it.

21 So you recall that you were at least a
22 participant in what was called a business analysis done
23 by a company called Activant?

24 Right?

15:42:37 25 A. Again, I don't -- I'm looking at this. I don't

1 remember doing this.

2 However, if I do see my name in there,

3 I'm -- obviously, I was involved in it somehow.

4 Q. All right. Fair enough. I'd like to review some

15:42:39 5 of the information that's in here and see if it comports

6 with your understanding of Hodell's business back around

7 September of 2008.

8 You're free to flip through the hard copy,

9 but I'm going to put these pages up on the screen here.

15:43:11 10 As part of this, there was a document in

11 here called a Company Overview.

12 MR. LAMBERT: I'm going to object, Your

13 Honor. There's no evidence that he did any of this.

14 THE COURT: That he what?

15:43:12 15 MR. LAMBERT: There's no evidence that he

16 prepared this document or knows anything about it.

17 MR. STAR: It's a questionnaire that was

18 answered by Hodell. He was part of this.

19 Throughout the document, other Hodell

15:43:24 20 individuals like Mr. Reidl are identified as having

21 answered the questions, Your Honor.

22 It was on our exhibit list.

23 THE COURT: I know, but he says he doesn't

24 remember doing it even though his name is there.

15:43:34 25 MR. STAR: I'm trying to refresh his

1 recollection.

2 THE COURT: You can have him look at it to
3 refresh his recollection.

4 MR. STAR: Fine.

15:43:39 5 BY MR. STAR:

6 Q. Mr. Clarke, as I said, not all of these pages are
7 numbered.

8 If you flip into the document at around
9 Page 10, you'll find one that's called Company Overview.
15:43:52 10 I'm happy to come up there and help you with it if you
11 need me to.

12 In fact, why don't I just do it this way?
13 Come stand next to you.

14 A. Please.

15:44:11 15 Q. Sir, let me show you this page here. Do you mind
16 reading. And you don't have to read it out loud, but
17 then I want to ask you if this refreshes your
18 recollection.

19 A. All right. The whole thing or just the highlighted
15:44:24 20 area?

21 Q. Just read this part and then I'll ask you some
22 questions?

23 A. "Products include fasteners and chain and chain
24 accessories. Currently we have" --

15:44:31 25 THE COURT: You can read it to yourself.

1 THE WITNESS: I'm sorry?

2 THE COURT: Read it to yourself.

3 THE WITNESS: Oh, all right.

4 (Pause)

15:44:53 5 Q. Are you done?

6 A. Yes, sir.

7 Q. You recall back around September of 2008, Hodel
8 had no more than about 65,000 SKUs?

9 A. Had 65,000 parts.

15:45:05 10 Q. Which parts are SKUs, correct?

11 A. Some gray area, right?

12 So every item has multiple ways of selling
13 it. You can sell an item in a box, in a pound, in a keg,
14 in a big box.

15:45:18 15 So what was in our old system, one item
16 with multiple packaging codes was now multiple items
17 under the SAP system so one part may have two, three,
18 four part numbers for the same item.

19 Q. All right. But at most, you had something like
15:45:37 20 65,000 part numbers?

21 A. Well, no. I just said some of those items had
22 multiple part numbers, so one item could be three or four
23 parts.

24 So that would be three or four part numbers
15:45:58 25 or SKUs.

1 Q. I see. Let me show you something else and ask you
2 if this refreshes you further.

3 Take a look at this highlighted language.

4 MR. LAMBERT: What page are we on?

15:46:00 5 MR. STAR: It's not numbered.

6 It's 17.

7 A. Okay.

8 Q. Does this refresh your recollection that back
9 around September of 2008 -- and incidentally, at that
15:46:42 10 time, Hodell is running the Business One system, correct?

11 A. 2008?

12 Q. Yes.

13 A. Yes.

14 Q. Okay. So does this refresh your recollection that
15:46:49 15 around September of 2008, Hodell had approximately 30,000
16 active inventory items but a total of 60,000 actual part
17 numbers?

18 A. 30,000 active items, 60,000 different parts, but
19 not part numbers.

15:47:09 20 You know, that's that area, right? There's
21 part numbers and items. There's two different terms for
22 that.

23 Q. Okay. And the approximate number of items being
24 stocked by Hodell back in September of 2008, you recall
15:47:24 25 to be approximately 30,000 different parts?

1 A. 30,000 different parts.

2 Q. Okay. Thank you. Sir, you'd agree with me that
3 the average number of lines on an invoice, sales order
4 that Hodel would enter, the average number of lines was
15:48:10 5 approximately four lines, right?

6 A. I never analyzed the number of lines on an invoice,
7 so I don't know.

8 Q. All right. Let me see if I might refresh your
9 recollection as well.

15:48:23 10 Take a look at the highlighted language
11 there, please.

12 A. From this information you're providing for me, I do
13 see it says that.

14 Q. Thank you.

15:48:44 15 And although you may have from time to time
16 a large order with a hundred or more lines, the average
17 order was four lines, around four lines?

18 A. According -- again -- I don't know that. According
19 to that document that you've provided for me, yes, that's
15:49:04 20 what it says.

21 Q. All right. And the problems that you were
22 explaining while you were being questioned by counsel,
23 they mainly related to the large orders that you were
24 entering, right?

15:49:18 25 You were discussing orders of over a

1 hundred lines and telling the jury that when you got
2 close to 200 lines, sometimes you lost an order?

3 A. Correct.

4 Q. So that didn't happen -- strike that.

15:49:30 5 That only happened with a small minority of
6 the orders when it did happen, right?

7 A. You know, if I recall in the deposition, the number
8 you had suggested was 25% of the orders were lengthy
9 orders. If that conflicts with that document, you know,
15:49:49 10 again, I didn't put that together, but I just saw what
11 you provided for.

12 It said it was a higher number than that.

13 Q. But you don't have an actual count of how many
14 orders or an exact percentage of orders where you
15:50:23 15 actually would run into a slowness problem but it
16 certainly wasn't all the orders, was it?

17 A. Could you repeat the question?

18 Q. Sure. I asked you a couple of them there. I'm
19 sorry.

15:50:23 20 A. All right.

21 Q. You don't have any data of the exact percentage of
22 your orders where they exceed a hundred lines, right?

23 A. I do not, no.

24 Q. Okay. And it was really with those long orders
15:50:27 25 where you had some problems from time to time, right?

1 A. We had problems with every order, every line we
2 entered.

3 The orders leaving or dropping the system
4 was on the longer orders is where we found it.

15:50:40 5 Q. Thank you. Shift gears real quick and then we'll
6 be done and let everybody get out of here.

7 Part of what you mentioned you were doing
8 in your job back in 2007 and 2008 was not only managing
9 what you called inside sales reps but what you called rep
10 agencies, right?

11 A. Correct.

12 Q. Those rep agencies, those are independent third
13 party companies that Hodell engaged with through
14 contracts to actually go out to customers and market,
15 promote, and sell Hodell's products, correct?

16 A. Correct. The independent rep would sell Hodell
17 products as well as tools and, you know, whatever else
18 they would have.

19 So yes.

15:51:44 20 Q. So these were basically independent resellers of
21 Hodell products, right? Let me restate that.

22 Independent promoters of Hodell's products,
23 correct?

24 A. Correct.

15:51:55 25 Q. And you personally were managing those

1 relationships with those independent third-party
2 companies that Hodell had out there promoting its
3 products to customers, right?

4 A. Correct.

15:52:07 5 Q. And part of what you would do is to provide those
6 independent companies with product literature from
7 Hodell, right?

8 A. Yeah. We had catalogs that we would give our reps,
9 and they would hand them out to customers, yes.

15:52:21 10 Q. And other marketing materials as well, right?
11 Literature about your products, about your pricing, those
12 sorts of things?

13 A. We had a package fastener catalog, we had a chain
14 catalog, some, you know, some other literature, I'm sure,
15:52:37 15 to promote the product.

16 Q. We've just been provided with a copy of this today.
17 I think we got this from you through your counsel.

18 This is the kind of thing that you would
19 give to those third-party companies when they'd go out
15:52:51 20 and meet with customers, right?

21 A. Yes. We would have them and hand that out to our
22 customers.

23 Q. All right. I'm just going to put it up on the
24 screen so we can see it.

15:52:59 25 They'd hand out -- those third parties

1 would hand out to customers a catalog that had Hodell's
2 name and Hodell's logo on it, right?

3 A. Correct.

4 Q. And inside the front cover, we'd see when Hodell
15:53:11 5 would go out, pardon me, when these third-party companies
6 would go out, they would provide information about Hodell
7 and little logos, other logos about Hodell and things
8 about the company history, right?

9 A. Correct, and the Gnat Man, that's one of my
15:53:28 10 favorites.

11 Q. This is the Gnat Man?

12 A. This is the Gnat Man, yes.

13 Q. All right. And you were familiar with the
14 contracts that Hodell entered into with these third
15:53:42 15 parties, right?

16 A. We had contracts based on the geography, the type
17 of customers that those reps called on.

18 Q. But just so we all understand, you personally were
19 familiar with those contracts, you were managing those
15:53:54 20 relationships?

21 A. Managing the relationships. I wasn't necessarily
22 managing the contracts.

23 Q. But you're familiar with what those contracts
24 provided, right?

15:54:09 25 A. I had a copy of the contract and, you know, in the

1 bottom drawer, but I wasn't the one that was putting the
2 contracts in front of the reps to have them sign them.

3 So I don't know the details.

4 Q. You recall that the contracts between Hodell on the
15:54:21 5 one hand and its third party representatives going out
6 into the world to sell Hodell's products provided for
7 certain things, right?

8 It allowed them to go out and promote
9 Hodell products to customers, just generally speaking?

15:54:40 10 A. Yes.

11 Q. Okay. They earned commissions for selling Hodell's
12 products to customers on behalf of Hodell, right?

13 A. Yes.

14 Q. Among other things, they were supposed to actively
15:54:54 15 and diligently promote the sale of Hodell's products
16 through personal solicitations and calls upon customers
17 and prospective customers, right?

18 A. Correct.

19 Q. And they were supposed to cooperate and assist
15:55:09 20 Hodell in the promotional -- in its promotional and
21 merchandising campaigns towards customers, right?

22 A. Yes.

23 Q. And among the responsibilities of these third-party
24 agencies that Hodell hired, they were required to
15:55:25 25 maintain records showing the number of sales calls and

1 the dates of the calls that they were making on each
2 customer on behalf of Hodell, right?

3 A. It wasn't a mandated thing, but, you know,
4 some -- we had conversations about what people they were
15:55:53 5 calling on.

6 Q. All right.

7 They were expected to be reporting to you
8 about their sales activities?

9 A. The sales activity was something we drove, right?

15:55:53 10 We kept record of the contacts from those
11 customers calling into our inside sales team. They
12 weren't -- they were handing out the literature, and my
13 inside team was managing the quotes or orders.

14 Q. Hodell would provide these third parties with sales
15:56:08 15 and technical information that they would then provide to
16 customers or prospective customers, right?

17 A. Yeah, you -- that's -- you have the copy there.

18 Q. Right.

19 A. Of --

15:56:19 20 Q. You'd also give price lists and other product,
21 price schedules, those sorts of things, for these
22 third-party people to give on to customers?

23 A. The pricing coding was predominantly handled by our
24 inside team, myself. We provided them a spreadsheet of
15:56:33 25 pricing for a customer, yes, or a discount to give them

1 for their products, yes.

2 Q. Okay. And you recall that these reps, these
3 third-party reps, had limitations on what they were
4 allowed to say to customers, right, about Hodell's
15:56:47 5 products?

6 A. Yes. They weren't privy to costs or, you know, a
7 lot of the information that we kept in ourselves.

8 Q. They were only allowed to make representations with
9 respect to quality and the capacity of products that
15:57:04 10 would be authorized in writing by Hodell, right?

11 A. We gave them a catalog and said, "Here, please
12 promote it."

13 Q. Right.

14 A. So it was --

15:57:24 15 Q. And you expected that they would only promote your
16 products in the way that you allowed them to promote them
17 and to not -- to not represent your products in a way
18 inconsistent with how you wanted your products
19 represented, correct?

15:57:27 20 A. Correct.

21 Q. All right.

22 And among other things, part of your
23 contracts with these third-party sales reps required the
24 sales reps to agree that they shall be acting as
15:57:44 25 independent contractors, right?

1 A. I don't have the details of those contracts, so I
2 don't know how it was worded.

3 Q. Let me see if I can refresh your recollection.

4 Take a look at this area here, sir.

15:58:28 5 A. Am I reading aloud or just to myself?

6 Q. No, just to yourself. Thank you.

7 MR. LAMBERT: We would object, Your Honor.

8 He hasn't established he has seen this before. How could
9 he refresh his recollection?

15:58:38 10 THE COURT: Let him ask the question.

11 BY MR. STAR:

12 Q. Sir, you are familiar with the document that I
13 handed you just now, right?

14 A. I read it, yes. I see what --

15:59:02 15 Q. Okay. But that is the kind of sales -- pardon
16 me -- that is the contracts that Hodell entered into with
17 these third-party sales rep agencies that went out into
18 the world and promoted Hodell's products to customers,
19 right?

15:59:18 20 A. Like I said, I'm not familiar with this, but now
21 reading what you've presented to me, I do see what it
22 says, yes.

23 Q. Thank you. And just to go over what I was
24 referring to earlier, you'd agree --

15:59:28 25 MR. LAMBERT: I'm going to object, Your

1 Honor.

2 THE COURT: Objection sustained.

3 He said he's not familiar with this.

4 BY MR. STAR:

15:59:33 5 Q. Sir, you recall testifying earlier that you managed
6 the outside sales reps, sales rep agencies, right, that
7 relationship?

8 A. I manage their day-to-day actions, operations,
9 sales, quotes, yes.

15:59:47 10 Q. Okay. And part of that relationship required these
11 representative agencies to enter into a contract with
12 Hodell, right?

13 A. Yes.

14 Q. Yes. And you were aware of that back in 2007 and
16:00:00 15 2008, that Hodell entered into contracts with outside
16 sales rep agencies, yes?

17 A. I was aware of that. When I took on my position, I
18 inherited a lot of reps. I don't know that I added any
19 reps so I didn't work -- you know, have this signed with
16:00:22 20 my reps.

21 And if we had, I wouldn't have been the
22 person that would be managing that part of that process.

23 Q. So you're telling me right now you were never
24 personally familiar with the contractual relationship
16:00:37 25 between Hodell and its third-party representative

1 agencies, is that what you're saying?

2 A. I'm not saying I wasn't familiar with it.

3 I knew we had a contract in place with our
4 reps based on geography, but I wasn't -- this does not
16:00:56 5 look familiar to me so.

6 Q. Sir, did you not say during your testimony earlier
7 when Mr. Lambert was asking you questions that these
8 contracts were actually in your bottom drawer at work?

9 A. Yes.

16:01:22 10 Q. Okay. And so just so we're all clear, because
11 that's why I thought you were familiar with these, I got
12 a little confused, you do know of these documents, you
13 got them out of your drawer in your desk, right?

14 A. As the sales manager, I was given a copy of a
16:01:58 15 contract that was signed by the rep agency and was it our
16 VP of finance at the time Floyd Lesti? You know, I'm not
17 sure who was the party at Hodell that was responsible for
18 that contract. Otto Reidl possibly.

19 I had a copy in my drawer. Did I look at
16:02:00 20 that copy and read that? No, I didn't.

21 Q. Okay. But you can read it now with me, can't you?

22 A. I could read that document.

23 Q. All right. And you agree with me that within the
24 sales rep contracts that you found in your drawer, that
16:02:19 25 the sales reps, the third-party reps, are required to

1 agree that in all matters --

2 MR. LAMBERT: Objection.

3 BY MR. STAR:

4 Q. -- they shall be acting?

16:02:27 5 THE COURT: Overruled.

6 Q. That in all matters they shall be acting as an
7 independent contractor.

8 You agree with me there, right?

9 A. Yes.

16:02:38 10 Q. You agree with me that the sales reps are required
11 to acknowledge and agree with Hodell that the rep shall
12 not have any authority to assume or create any
13 obligation, expressed or implied, on behalf of Hodell as
14 an agent, employee, or in any capacity other than as
16:03:01 15 herein before set forth in the contract, right?

16 A. If you are reading from this document, then, yes.

17 Q. All right. And under no circumstances does Hodell
18 allow these reps to call themselves agents or to do
19 anything which could imply that Hodell is in any way
16:03:24 20 responsible for the acts of these third parties, right?

21 MR. LAMBERT: Objection.

22 THE COURT: Overruled.

23 A. Could you repeat it again for me?

24 Q. Sure. And Hodell requires these third-party sales
16:03:52 25 reps to agree that they're not allowed to use the word

1 "Agent" or to use any other designation which could imply
2 in any way that Hodell is responsible for the actions of
3 those reps, right?

4 A. If that is stated in this document in front of me,
16:03:59 5 then yes. I mean, it's obviously there if you're reading
6 it.

7 Q. Just to refresh you, flip to the next page. It's
8 14.1. And when you've read that, just to yourself, let
9 me know.

16:04:30 10 A. That is, yes. 14.1.

11 Q. All right.

12 So under no circumstances does Hodell allow
13 these outside sales reps to describe themselves as agents
14 or to imply that Hodell is responsible for what they do,
16:04:42 15 right?

16 A. That's not what it says. It says in any other
17 designation which might imply that Hodell is responsible
18 for their -- but, yeah, when I'm reading, I see it.

19 MR. STAR: Thank you. No other questions.

16:04:56 20 THE COURT: Thank you.

21 Any redirect?

22 MR. LAMBERT: Just a few, Your Honor.

23 REDIRECT EXAMINATION OF JAIME CLARKE

24 BY MR. LAMBERT:

16:05:22 25 Q. Just a couple follow-up questions.

1 You were asked about, something about some
2 standing orders, do you remember that, that had to be
3 transitioned over from the old system to the new system?

4 A. Yes.

16:05:32 5 Q. Are those orders what you were talking about that
6 caused your employees to come into your office crying or
7 stay late or come in early? Are those the type of orders
8 you were talking about?

9 A. It was a small amount of orders.

16:05:46 10 You know, and again, we had time to
11 prioritize. It was putting those orders in. If it was
12 something that needed to go out tomorrow, then obviously
13 we would manage that in the manner required to do that.

14 But if the order was futured out, it wasn't
16:06:02 15 on the priority list. We were able to fit that in
16 amongst every other thing that we were doing at the time.

17 Q. But in other words, putting in the standing orders
18 wasn't what you were talking about during your testimony
19 earlier that was causing consternation and disruption
16:06:44 20 with your employees?

21 A. You know, if we had a hundred or 500 of those
22 standing orders, it wasn't day one mandatory that no
23 one's going to leave those place until those standing
24 orders are in. That wasn't the case.

16:06:44 25 Q. You were asked about long orders and whether they

1 were tested.

2 Do you recall that?

3 A. I do.

4 Q. And is it your understanding that long orders were
16:06:44 5 tested; it just wasn't you that did it?

6 MR. STAR: Objection.

7 THE COURT: Overruled.

8 A. I think I stated before, there was other people
9 that were -- their responsibility was more the longer
16:06:52 10 orders, the bigger orders, and that was the people who
11 would have been testing those orders.

12 I was testing smaller orders or getting
13 more familiar with the system, but I wasn't -- I didn't
14 personally enter any testing orders of that size.

16:07:06 15 Q. You were shown a document by Mr. Star to refresh
16 your recollection about some things that it said about
17 Hodel and its inventory items and things like that.

18 Do you recall that line of questioning?

19 A. Yes.

16:07:19 20 Q. Had you ever seen that document before?

21 A. It was the -- the Activant one.

22 MR. STAR: No --

23 THE COURT: Overruled.

24 A. There was, you know, one from our website that --

16:07:35 25 Q. I'm talking about the one that says Activant on it.

1 A. Yeah, I mean, I see my name on there, but, you
2 know, I don't remember all 300, 200 pages of that, no, I
3 do not.

16:07:49

4 Q. In fact, have you ever seen all 200, 300 pages of
5 that before?

6 A. No. If I -- no. No.

7 Q. And are you willing to state that everything in
8 there is accurate?

9 A. Is everything in here accurate?

16:07:59

10 Q. Are you willing to state that everything in there
11 is accurate?

12 A. Why -- I wasn't personally responsible or a part of
13 doing it but, you know, no, I --

16:08:10

14 Q. You have no personal knowledge of how that
15 information was compiled?

16 A. No, I don't remember how that was compiled.

17 I see my name in there but, you know,
18 someone may have asked me some questions during that
19 time, but I don't, you know, not responsible for every
20 one of those pages.

16:08:21

21 Q. But other than that vague recollection, you know
22 nothing else about that document?

23 A. I really don't remember it.

24 Q. Just a couple other questions.

16:08:34

25 The question about which orders dropped or,

1 you know, fell off the system I think was a term that was
2 used.

3 Do you recall that?

4 A. Yes.

16:08:44 5 Q. Question being posed to you?

6 Were long orders the only ones that your
7 team had problems with, or was it just about every order?

8 A. No, I mean, I think I said it, it was that every
9 order had a problem.

16:08:59 10 It was -- the ones that dropped that were
11 longer were obviously the ones that people were upset
12 about, all right? If it was a one-line order and it
13 dropped, you ran the one line. It was 189 lines that
14 somebody had to re-enter, obviously somebody is going to
16:09:16 15 get upset over that more so than a one-line order.

16 So remembering, it's the longer ones that
17 stick out obviously as the pain, you know, the pain
18 items; not the smaller orders.

19 But there were -- every order took longer
16:09:29 20 regardless of size. It's just the bigger ones that are,
21 you know, the ones you remember more.

22 Q. In other words, the slowness persisted through
23 every order; not just the long ones?

24 A. Right. One-line order, slow. 200 line order is
16:09:57 25 slow, but it's obviously magnified by how many lines you

1 have to enter in.

2 Q. And finally, the third-party representatives that
3 you were discussing that you managed as a sales manager,
4 do you recall that?

16:10:02 5 A. Yes, sir.

6 Q. Were they actually selling Hodell's products that
7 Hodell manufactured, or were they selling products that
8 other companies manufactured?

9 A. I mean, we didn't -- Hodell didn't manufacture.
16:10:17 10 We're a master distributor, a wholesaler, so we didn't
11 manufacture any items.

12 They were simply selling the items that we
13 distributed, that were made by other people, in our boxes
14 to across the U.S.

16:10:31 15 Q. So they were helping Hodell distribute other
16 companies' products manufactured by other companies,
17 correct?

18 A. Yes. Yes. We did not manufacture those parts.

19 Q. And they handed out literature to potential
16:10:46 20 customers, is that what your testimony was?

21 A. Yes. They would go out and in a geographic area
22 and look for new opportunities and drop literature off
23 and suggest that those people they would talk to would
24 call in to us to navigate the pricing and the
16:11:03 25 availability of the materials.

1 Q. And did those third-party reps actually consummate
2 a sale? Could they actually consummate a sale of a
3 product that Hodell distributed?

4 A. No. I mean, they -- they would suggest that a
16:11:20 5 buyer, a purchasing agent, would call in to us, into our
6 inside team, who then would price it based on size or
7 need or quantity or whatever the requirement was.

8 But it was Hodell that was pricing it,
9 Hodell that was quoting it. It wasn't the rep that was
16:11:39 10 quoting it.

11 Q. In other words, the third-party could give the
12 potential customer information, but for the third-party
13 to actually buy the product, it had to contact Hodell
14 directly, is that what you're saying?

16:11:52 15 A. For the customer to buy the product, yes, that
16 customer had to come in through us; not through that
17 third-party.

18 Q. Okay.

19 And to the extent something was said to
16:12:00 20 that third-party about Hodell's services or the product
21 or the price by these third-party reps, did Hodell stand
22 behind what that person's -- those reps said?

23 MR. STAR: Objection. Foundation.

24 THE COURT: Objection sustained.

16:12:18 25 Q. If one of your entities that you managed was out

1 there passing out literature relating to products Hodell
2 sold, did Hodell stand behind that literature?

3 MR. STAR: Objection. Leading.
4 Hypothetical.

16:12:35 5 THE COURT: Overruled.

6 A. I mean, if the reps were handing out information,
7 if the reps were given a price, if the reps were making a
8 commitment to inventory, to services, it was our
9 responsibility as the company to live up to those
16:12:54 10 expectations or requirements, whatever the rep would have
11 committed to.

12 Q. So in other words, you didn't tell the customer at
13 that point, "Hey, some other company said that to you;
14 not us"?

16:13:05 15 MR. STAR: Leading.

16 THE COURT: Did you object to that?

17 MR. STAR: Yes.

18 THE COURT: Overruled.

19 A. What was the question again? I'm sorry.

16:13:15 20 Q. In other words, you didn't tell the customer at
21 that point, "Hey, that was another entity that said that
22 to you, not Hodell, we're not living up to that"?

23 A. No, right we would live up to whatever
24 that -- whatever was said. It was our responsibility not
16:13:30 25 to leave a bad taste in the customer's mouth by not

1 living up to whatever that was.

2 Q. And, in fact, you testified you were the sales
3 manager that actually managed those third-party
4 representatives, correct?

16:13:42 5 A. Correct.

6 Q. And you testified that you didn't even know that
7 that contract language existed that Mr. Star read to you,
8 correct?

9 A. I look at the date. This is dated prior to my time
16:13:52 10 as a sales manager so, yes, I knew there was a contract
11 between the rep and Hodell.

12 Did I know the details of the contract? I
13 did not.

14 Q. You didn't even know that there was something that
16:14:04 15 said that, correct?

16 A. No. I -- based on geographic location and a
17 percentage of commission, those are the two things that
18 obviously the concern of the rep is the commission,
19 right, so that much I know about, but all of the 32, 42,
16:14:19 20 whatever the pages are, I did not know that was around.

21 Q. Okay.

22 MR. LAMBERT: Thank you. Nothing further.

23 THE COURT: Any recross?

24 MR. STAR: No, Your Honor. Thank you.

16:14:28 25 THE COURT: Thank you, Mr. Clarke. You're

1 excused.

2 (Witness excused)

3 THE COURT: Okay, folks. That will
4 conclude our testimony for the week. Thank you for your
16:14:36 5 patience with us and your attention.

6 Now, when you go home this weekend, you've
7 heard a lot of evidence. You certainly have not heard it
8 all, nor do you know what the law is that applies in the
9 case. So it's important that you keep an open mind, that
16:14:47 10 you don't form or express any opinion about any aspect of
11 the case. No independent research, right? Everything
12 that you need in order to have a fair verdict or to reach
13 a fair verdict will be presented within the confines of
14 the courtroom.

16:15:00 15 So you don't need, nor should you have any
16 other information.

17 Enjoy yourself, relax. You have a big week
18 next week, too, so we'll see you same time, same place,
19 right, Mr. Panigutti?

16:15:16 20 A JUROR: Right.

21 THE COURT: All right. Have a nice
22 weekend.

23 (Jury out) .

24 (Proceedings adjourned at 4:19 p.m.)

16:19:35 25 - - - - -

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Susan Trischan

/S/ Susan Trischan, Official Court Reporter
Certified Realtime Reporter

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